



January 9, 2017

The Honorable Mitch McConnell, Maj. Leader
United States Senate
S230 US Capitol
Washington, DC 20510

The Honorable Charles Schumer, Min. Leader
United States Senate
US Capitol S221
Washington, DC 20510

The Honorable Chuck Grassley, Chairman
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Dianne Feinstein, Ranking Member
United States Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, DC 20510

Dear Leader McConnell, Leader Schumer, Chairman Grassley, and Senator Feinstein:

The nomination of Sen. Jeff Sessions to serve as U.S. Attorney General is a threat to many of our nation's most cherished ideals of democracy. His actions and publicly stated views are out of touch with our nation's citizens, its laws, and with the Constitution.

Over our 46-year history, Common Cause has rarely weighed in on presidential appointments. We reserve censure on nominations to which the executive is constitutionally entitled for those nominees who have proven unfit for the job. As a decades-old organization committed to holding power accountable – no matter who holds it -- we are compelled to weigh in on President-elect Trump's nomination of Sen. Sessions as the nation's top lawyer. Because Mr. Sessions espouses beliefs and has taken actions contrary to the ideals of an inclusive democracy, we have urged the Senate to defeat his nomination.

The Department of Justice (DOJ) is required, among other things, “to enforce the law” and “ensure fair and impartial administration of justice for all Americans.”¹ Part of the Attorney General’s job is to ensure compliance with existing federal law, including the Voting Rights Act, the Help America Vote Act, and the National Voter Registration Act. Sen. Sessions’ past statements and actions indicate that, if confirmed as Attorney General, he would fail to fully uphold the Voting Rights Act, and perhaps other key civil and voting rights legislation, as those laws stand today.

In 1986, and again in 2005, the Senator called the Voting Rights Act (VRA) an “intrusive piece of legislation.”² Although he voted in 2006 to reauthorize the federal law – the Senate reauthorized extension by a 98-0 vote – Sen. Sessions years later applauded the Supreme Court’s 2013 decision in *Shelby County v. Holder* to gut a section of the Voting Rights Act that for decades had stopped discriminatory voting laws from seeing the light of day.

Shortly after *Shelby* came down, Sen. Sessions said that “if you go to Alabama, Georgia, North Carolina, people aren’t being denied the vote because of the color of their skin.”³ At best, this statement is naive; at worst, willfully ignorant. All three states made voting changes with discriminatory impact – a photo ID law in Alabama; rescheduled municipal elections in Georgia; and repressive omnibus legislation, including cuts to same day registration and early voting and a new photo ID law, in North Carolina. A federal court in striking down the provisions passed in North Carolina found that they intentionally “target African Americans with almost surgical precision.”

As U.S. Attorney for the Southern District of Alabama, in the mid-80s, Mr. Sessions prosecuted three civil rights activists organizing voter registration drives in a black majority county on allegations of voter fraud. Due to a dearth of evidence – only 14 purportedly tampered ballots out of 1.7 million votes cast – the jury acquitted the individuals in less than four hours.⁴

If Mr. Sessions is appointed head of DOJ, much of the work done to advance voting rights over the past 50 years could come undone. The law that helped ensure Americans could cast their constitutionally-guaranteed ballots free from discrimination will be on the chopping block, with Mr. Sessions swinging the axe.

¹ Department of Justice, <https://www.justice.gov/about> (last visited Nov. 29, 2016).

² Tierney Sneed, *Why Jeff Sessions as Attorney General Horrifies Voting Rights Advocates*, Talking Points Memo, Nov. 16, 2016, <http://talkingpointsmemo.com/dc/why-trump-s-choice-of-jeff-sessions-as-ag-is-alarming-voting-rights-advocates>; see also Adam Serwer, *Will Jeff Sessions Roll Back Civil-Rights Protections*, The Atlantic, Nov. 18, 2016, <http://www.theatlantic.com/politics/archive/2016/11/trumps-pick-for-attorney-general-foreshadows-a-civil-rights-rollback/508172/>.

³ Adam Serwer, *Will Jeff Sessions Roll Back Civil-Rights Protections*, The Atlantic, Nov. 18, 2016, <http://www.theatlantic.com/politics/archive/2016/11/trumps-pick-for-attorney-general-foreshadows-a-civil-rights-rollback/508172/>.

⁴ Sarah Wildman, *Closed Sessions*, New Republic, Dec. 30, 2002, <https://newrepublic.com/article/61363/closed-sessions>.

or membership in a specified language group. Because Mr. Sessions has reiterated his assertion that the VRA is “intrusive,” and has applauded the *Shelby* decision, it is highly likely that DOJ would fail to prosecute, using this effective tool, even when state laws clearly result in discrimination. Such failure to prosecute would amount to a failure to equally protect the rights of all Americans – a requirement of the Attorney General’s job description.

For this most recent nomination, Sen. Sessions did not even fully complete the Judiciary Committee’s required questionnaire. Among other things, he omitted mention of his rejected nomination to serve as a federal judge despite a specific request to list all prior nominations. The Senator also omitted references to dozens of op-eds and recent interviews, including some conducted with Breitbart News and one as recent as October of 2016 in which he excuses President-elect Trump’s statements condoning sexual assault.⁵ Content aside, such omissions amount to a process violation. In 2010, when the Senator himself reviewed submissions from a judicial nominee, he noted that the incomplete response was “potentially disqualifying” and amounted to a criminal offense.⁶ For the Senator to now engage in the same misbehavior he previously excoriated is not just disrespectful to this Committee but also a clear indication that he would not abide by the requirements of the Attorney General’s job description. To maintain the rule of law from the office of the country’s chief attorney, one must abide by it; Sen. Sessions, in flouting the rules of this nomination process, has already proven himself incapable of the job at hand.

Sen. Sessions additionally tries to create for himself a pro-civil rights record that simply does not exist. As three former DOJ attorneys noted in a recent op-ed,⁷ Sen. Sessions completed no substantive work on at least three of the four civil rights cases he claimed, in his recent questionnaire, as significant litigation on which he “personally” worked. Tellingly, Sen. Sessions failed to include these very same cases in his questionnaire for his 1986 nomination to a federal judgeship.

Also of critical importance to the Attorney General’s duties is the role of DOJ’s Office of Legal Counsel. This office is meant to provide advice to the president and agencies on the legality of proposed actions, ranging from whether the president can accept a gift or prize to the legality of the proposed domestic surveillance programs. Given Sen. Sessions’ public stances on openness to considering President-elect Trump’s proposal to ban Muslims from entering the country, denouncement of the Supreme Court’s holding on marriage equality, and labeling of groups like the NAACP and ACLU as “un-American,” we have little assurance that

⁵ Jennifer Bendery, *Jeff Sessions Omits Decades of Records for his AG Confirmation Hearing*, *Huffington Post*, Dec. 30, 2016, http://www.huffingtonpost.com/entry/jeff-sessions-attorney-general_us_586680bce4b0eb58648909c8

⁶ *Id.*

⁷ J. Gerald Hebert, Joseph D. Rich, William Yeoman, *Jeff Sessions says he handled these civil rights cases. He barely touched them*, *Washington Post*, Jan. 3, 2017, https://www.washingtonpost.com/opinions/jeff-sessions-says-he-handled-these-civil-rights-cases-he-barely-touched-them/2017/01/03/4ddfffa6-d0fa-11e6-a783-cd3fa950f2fd_story.html?utm_term=.fddc39e1cd71

Mr. Sessions would provide evenhanded legal advice on issues ranging from “blind trusts” to immigration to national security. Such advice, in President-elect Trump’s hands, could be used to justify dangerous actions.

In light of Sen. Sessions’ unfitness for the job of Attorney General, we strongly urge you to reject his nomination.

Sincerely,



Karen Hobert Flynn, President
Common Cause

Paul S. Ryan, VP Litigation and Policy
Allegra Chapman, Director of Voting and Elections, Sr. Counsel

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