
THE CONFIRMATION SESSIONS

The Senate Judiciary Committee should leave no stone unturned during Jeff Sessions' confirmation hearing for attorney general.



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More than thirty years ago, Jefferson Beauregard Sessions III, President-elect Donald Trump's pick for Attorney General, was in a similar situation as he will be on January 10 when he goes before the Senate Judiciary Committee for his confirmation hearing. Tapped by President Ronald Reagan for a federal judgeship in 1986, Sessions sat before the very same committee for his previous confirmation hearing. Things did not go well.

Witnesses accused Sessions, then the U.S. attorney for the southern district of Alabama, of repeatedly making racially insensitive and racist remarks. Thomas Figures—a former assistant U.S. attorney in Mobile, Alabama, who worked for Sessions—told the Senate Judiciary Committee that his former boss said he thought the Ku Klux Klan was okay until he learned members smoked pot.¹ Sessions said the comment wasn't serious. Figures, an African-American man, also alleged that Sessions called him “boy” and told him “to be careful what you say to white folks.”² Sessions denied this, too.

But Figures wasn't alone. Visiting Mobile, Alabama, from Washington, D.C., a Justice Department lawyer heard Sessions call the ACLU “un-American” and “communist-inspired”³ and opined that the ACLU and the NAACP “did more harm than good when they were trying to force civil rights down the throats of people who were trying to put problems behind them.”⁴ Sessions said he didn't recall saying that but admitted he could be “loose with my tongue”⁵. Not surprisingly, a civil rights coalition of over 160 groups⁶ and members of the Alabama Legislature separately opposed the Sessions' nomination and asked the Senate Judiciary Committee to vote no on the young attorney from Hybart, Alabama. In a bipartisan vote, committee members refused to confirm Sessions, making him just the second judicial nominee in 49 years to be denied confirmation by the Senate Judiciary Committee at that time.⁷

Sessions recovered well. In 1994, he was elected as Alabama's attorney general.⁸ Two years later, the people of Alabama sent him to the U.S. Senate.⁹ He's never lost a campaign, and now he's poised to become the head of the Department of Justice. But the same concerns that doomed Sessions' shot at becoming a federal judge three decades ago continue to stalk him today, only—and they have been made more troubling when you add Sessions' Senate record to the mix.

The ACLU as a matter of long-standing policy does not support or oppose candidates for elected or appointed office. However, questions regarding police reform, voting rights, immigrants' rights, criminal justice reform, Muslims' rights, racial justice, LGBT rights, women's rights, privacy rights, torture, and abortion rights must be asked of and answered by Jeff Sessions if the Senate is to be discharged of its duty and if Americans are to be fully informed of how the nominee is to serve as the nation's highest law enforcement officer. The attorney general must be an individual who will steadfastly enforce the U.S. Constitution and protect the civil rights and liberties of all Americans equally.

The Senate Judiciary Committee must give Jeff Sessions a tough confirmation hearing and, for their Senate colleagues and the sake of the American public, thoroughly explore whether Sen. Sessions is up to the task.

WOULD JEFF SESSIONS CONTINUE THE PUSH FOR POLICE REFORM?



Photo: freeside/Flickr

One of the legacies of the Obama-era Department of Justice will be its focus on combatting police abuse, particularly in communities of color, in cities across the country. With Jeff Sessions as attorney general, it is legitimate to ask whether Obama-era practices and reforms targeting unjust and unconstitutional practices, such as militarized policing, will be rolled back quickly if not dismantled entirely.

Would Jeff Sessions Continue to Police the Police?

During the past seven years, the Department of Justice's Civil Rights Division has investigated 23 law enforcement agencies for civil rights abuses. Fourteen of those 23 investigations have ended in consent decrees¹⁰—including in Ferguson, Missouri—which means the police departments have come to an agreement with the Justice Department to implement reforms in how they do business.

In Ferguson, for example, the court-enforceable consent decree, among other things, revises the police department's use of force policies to emphasize de-escalation and prohibits the department from implementing policies that treat people like ATM machines for the city. For context, the Justice Department signed only three consent decrees with police departments out of 20 investigations initiated during President George W. Bush's eight years in office.¹¹

There is every indication that holding state and local police departments accountable for biased or excessive policing would no longer be a priority in a Sessions-led Justice Department. For one, Sessions is hostile to consent decrees. In the foreword of a 2008 report published by the Alabama Policy Institute, Sessions described consent decrees as “dangerous” and “constitut[ing] an end run around the democratic process.”¹² The question for senators now is whether Sessions believes consent decrees are an

illegitimate way for the federal government to ensure police departments with a history of civil rights abuses implement reforms that respect people's constitutional rights.

Furthermore, Sessions has supported the belief there is a war on police underway, causing police to "[sit] under the shade tree."¹³ In September 2015, Sessions co-sponsored¹⁴ the Thin Blue Line Act, which would instruct juries to consider the murder or attempted murder of police officers, firefighters, and other first responders an aggravating factor when considering whether to put a defendant to death. Sessions pushed this law, even though many states already have such laws on the books.

Sessions' regard for the police sometimes borders on being unreflective and uncritical. The senator seems to think that the high-profile incidents of excessive police force are isolated and the result of bad apples, not bad policies. After the shootings of the Dallas police officers in July of 2016, Sessions issued a statement which included this: "As a nation, we must send a unified message that we will not stand silent while those who protect and serve are unfairly maligned for the actions of an unrepresentative few."¹⁵

Yet, there have been nearly 2,200 people killed by police in America over the past two years, according to The Guardian's database, "The Counted." Disproportionately, those people were people of color. For instance, in 2015, a Black person was more than two-and-a-half times more likely to be killed by police than a white person when controlling for population size. In 2016, that disparity increased to over three times more likely.

Members of the Senate Judiciary Committee should ask nominee Sessions whether he finds such numbers high and the result of police policies that emphasize force over de-escalation. Committee members should also question Sessions on what role, if any, the Justice Department would play in trying to help police departments nationwide reduce the number of people they kill.

Would Jeff Sessions Revive the Militarization of Police?

In the aftermath of Michael Brown's death in Ferguson, the police response to mass protests also symbolized the creeping militarization of our country's police forces with the federal government's assistance. Each night, Americans could see police officers decked out in body armor and holding M-4 rifles as armored vehicles rolled down the streets of the St. Louis suburb. The public outrage led the Obama administration to better oversee and regulate the Pentagon's 1033 program, which transfers surplus military-grade weapons, vehicles, and resources to state and local law enforcement agencies free of charge and, before the reforms, required agencies to use what they received within one year.¹⁶

Trump, however, disagrees with the Obama administration's move. In a Fraternal Order of Police questionnaire, then-candidate Trump called 1033 an "excellent program that enhances community safety" and promised to rescind President Obama's executive order placing restrictions on the transfers.¹⁷ Because of President-elect Trump's favorable views on 1033, senators should make it a point to ask

Sessions whether he agrees with his boss on giving local and state police departments weapons of war designed for battlefields and not America's cities and towns.

This isn't an academic question far removed from the attorney general's job description. The creeping militarization of police in America today isn't just the work of the Pentagon. The Justice Department's Edward Byrne Memorial Justice Assistant Grant program has also helped militarize American policing, according to our "War Comes Home" report issued in 2014¹⁸, by providing federal funds that are used to buy military-grade materiel as well as fund drug task forces, which routinely employ paramilitary tactics during drug investigations.

It's important to remember that the militarization of police is antithetical to community policing, the idea that police work cooperatively with the people they protect and serve to enhance public safety and solve problems together. Instead, training and arming police like soldiers instills an us-versus-them mentality into officers and the people they police. This should worry Jeff Sessions since he believes community policing is a "great thing"¹⁹ even if his voting record says otherwise.

Inside the Justice Department, the Community-Oriented Policing Services (COPS) promotes democratic policing—for example, as part of its collaborative reform initiative, it recently launched an independent and comprehensive assessment of the police department in Saint Anthony, Minnesota, where Philando Castile was killed—and has warned about police militarization and the warrior mindset it produces.²⁰ The COPS office also engages police departments through collaborative reform, a voluntary and cooperative effort that police chiefs and mayors utilize to reform police practices in troubled departments.

Yet, according to Vice News, Sessions voted against an amendment in 1999 that would have provided over \$1.1 billion dollars a year from 2000 to 2005 to expand the COPS program. Eight years later, he voted against another bill that would have funded the program at the same amounts.²¹

Some experts worry that policing reform will no longer be a priority in Washington under a Sessions Justice Department. "I don't think that the DOJ under Sessions or a Trump administration is going to be able to derail police reform efforts," Seth Stoughton, an assistant professor at University of South Carolina School of Law and a former Tallahassee, Florida, police officer told Vice News. "But I think over the next four years, police reform efforts are more likely to move despite federal policy, rather than because of federal policy."²²

The American public, particularly those communities at greatest risk of police abuse, have a right to know whether the DOJ will hold police departments and individual officers responsible when they engage in unconstitutional and draconian policing practices.

WOULD JEFF SESSIONS PROTECT VOTING RIGHTS?

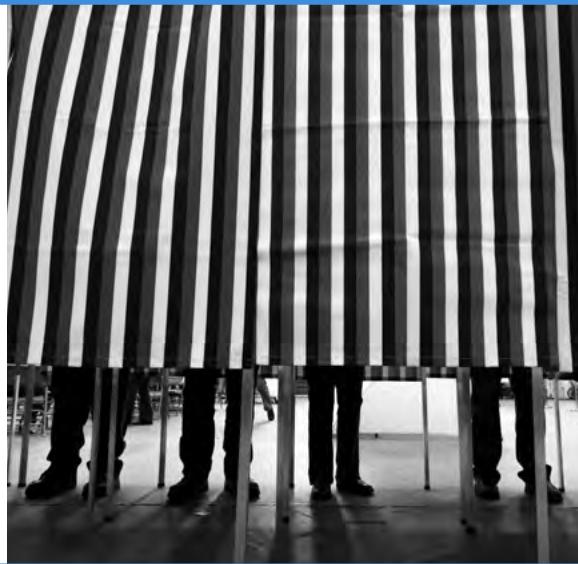


Photo: Andrew Cline/Shutterstock

During his confirmation hearing back in 1986, Sessions received withering questioning from senators for his prosecution of three Black civil rights activists in 1985 for voter fraud. One of the defendants, Albert Turner, was the son of a sharecropper and an aide to the Rev. Dr. Martin Luther King, who led the wagon that carried King's body at his funeral. Turner was beaten by police at the "Bloody Sunday" Selma to Montgomery march and was nicknamed "Mr. Voter Registration" for his work registering Blacks voters after the passage of the Voting Rights Act in 1964. Facing more than 100 years in prison for violating the Voting Rights Act, according to *The Nation*, Turner, his wife, and his friend were acquitted on all charges by a jury of seven Blacks and five whites.²³

Turner said the prosecution was a "witch hunt" and that "the Federal Government came in here for the sole purpose of intimidating black voters who were trying to elect black officials" because "blacks ha[d] gotten too well organized for political empowerment in the Black Belt of Alabama." Sessions defended himself stating he ran the U.S. attorney's office "without any racial bias whatsoever" and that he had enough evidence to justify his prosecution of Turner, his wife, and his friend on voting fraud charges.²⁴

Despite Sessions' protests that he acted responsibly in the Turner case, there is more evidence that suggests Sessions is no friend to equal voting rights for all.

In another episode during his 1986 confirmation hearings, the sworn testimony of J. Gerald Hebert, a senior trial attorney in the Voting Section of the Justice Department's Civil Rights Division, also painted an disturbing picture of Sessions' views on those who engage in the struggle for civil rights. Hebert recalled a conversation with Sessions where Hebert told Sessions that he heard a federal judge called a white civil rights attorney "a disgrace to his race." According to Hebert, Sessions replied, "Well, maybe he is."²⁵

Two decades later, Sessions questioned whether Section 5 of the Voting Rights Act was necessary anymore, though he did ultimately vote for its extension. Under Section 5, some state and local jurisdictions with a history of discrimination had to clear election law and policy changes with a federal judge or the Department of Justice to ensure that they didn't disproportionately burden minority voters. Sessions worried at the time that the Voting Rights Act extension "does little to acknowledge the tremendous progress made over the past 40 years in Alabama and other covered jurisdictions."²⁶

In 2013, the Supreme Court's decision in *Shelby County v. Holder* rendered Section 5 protections toothless. As we predicted, the Supreme Court's decision initiated a flurry of laws to weaken voter protections. Since the Shelby decision, 17 states approved new voting restrictions that weren't in place during the last presidential election, including cutbacks to early voting as well as onerous and unnecessary documentation requirements.

Sessions has not spoken out against these unnecessary restrictions on the voting. But, in an echo of the failed Albert Turner prosecution, Sessions has continued to make unsubstantiated assertions about widespread voter fraud, including suggestions that unspecified actors were "attempting to rig [the 2016] election."²⁷ Throughout the country, we have seen politicians make similar baseless allegations of fraud to justify undue barriers to the ballot.

If Sessions is confirmed as the next attorney general of the United States, it will be his job to oversee the Voting Section of the Justice Department's Civil Rights Division and enforce all the major federal laws protecting Americans' right to vote, including the Voting Rights Act. It is an awesome responsibility, and members of the Senate Judiciary Committee's questioning should determine whether Sessions will act vigorously to protect voting rights when he has a track record of eyeing such protections with suspicion.

WOULD JEFF SESSIONS PROVIDE DUE PROCESS TO IMMIGRANTS AS WELL AS PREVENT THE STATES FROM ENFORCING FEDERAL IMMIGRATION LAW?



Photo: Sam Frost

During his Senate career, Jeff Sessions has taken an extremist, fringe view of the 14th Amendment, denying its guarantee of U.S. citizenship for everyone born on U.S. soil. In 2015, he introduced legislation using local law enforcement to enforce federal immigration law²⁸—practices that have led directly to racial profiling and illegal detentions in violation of the Fourth Amendment—and opposes allowing unaccompanied children fleeing persecution from reuniting with family already inside the United States. Sessions has been the leading opponent of comprehensive immigration reform in the Senate and has expressed ethnic bias in his positions on immigration, such as his view that “[f]undamentally, almost no one coming from the Dominican Republic to the United States is coming here because they have a provable skill that would benefit us and that would indicate their likely success in our society.”²⁹ The American Immigration Council called his nomination “highly concerning.”³⁰

Sessions’ record on immigration should concern those who want a fair immigration system since the attorney general has enormous power under the Immigration and Nationality Act. For instance, the attorney general is in charge of the nation’s immigration courts and the Board of Immigration Appeals, which are already overburdened by burgeoning caseloads. With President-elect Trump’s threat to engage in the immediate deportation of two to three million immigrants, the attorney general has an enormous responsibility to ensure that removal proceedings are conducted fairly and in compliance with the Due Process Clause of the Fifth Amendment.

Currently, an immigrant facing removal has to wait an average of 635 days for an immigration hearing³¹. Because immigrants are already detained unnecessarily while they defend their cases, and President-elect Trump has threatened to use immigration incarceration even more harshly, the combination of overloaded immigration courts, long delays in adjudication, and incarceration will portend mass violations of due process. Sessions’ expressed views on immigration reform give no reassurances that he will take such problems seriously as attorney general.

If confirmed as attorney general, Sessions would also preside over the Justice Department's Office of Immigration Litigation. In 2010, it was this DOJ office that challenged Arizona's "show me your papers" law, which required state and local law enforcement to determine the immigration status of someone arrested or detained when there is "reasonable suspicion" that they are not in the country legally.³² The Justice Department, under Attorneys General Holder and Lynch, have consistently ensured that local police agencies do not engage in immigration enforcement efforts that are directly linked to racial profiling in violation of the Fourteenth Amendment and illegal stops and detentions in violation of the Fourth Amendment.

Based on Sessions' record, it's likely he wouldn't just refuse to fight such state laws but actively support them. After all, President-elect Trump initially made a large plank of his campaign the deportation of every undocumented immigrant within two years of taking office. And there is no reason to believe that the cost of state and local immigration enforcement—rampant racial profiling and illegal detentions—has given the president-elect or nominee Sessions any pause.

The Senate Judiciary Committee must ask whether nominee Sessions believes immigrants deserve basic due process protections to ensure that they are not incarcerated for long periods of time or unjustly deported, particularly when it tears apart American families or returns immigrants to countries where they face persecution or torture. Americans also deserve to know whether Sessions continues to believe the federal government should extend its immigration enforcement responsibilities to state and local law enforcement and turn the Southwest border into a police state.

WOULD JEFF SESSIONS WORK TO REFORM THE POLICIES OF MASS INCARCERATION?



Photo: Texas Dept. of Corrections

In October of 2015, Sessions delivered on the Senate floor prepared remarks with a provocative title, “Don’t Weaken Criminal Law in Middle of Crime Wave.”³³

Throughout the speech, Sessions railed against a bipartisan sentencing reform bill from President Obama and members of Congress to reduce the mandatory minimums of certain drug crimes as well as give judges more discretion when sentencing people convicted of some drug crimes. According to Sessions, the president and bipartisan members of Congress were doing this at a time when “[c]rime is already rising at an alarming rate,” citing spiking murder rates in particular cities, such as Baltimore, Washington, D.C., and Chicago.

There was only one problem with the speech, wrote Andrew Cohen of the Brennan Center for Justice in December of 2015: Sessions “ignored uncontested research that America is as safe as it has been in decades.”³⁴ Two months before Sessions’ Senate speech, in August of 2015, two conservatives also took to the pages of The Washington Post to denounce opponents of criminal justice reform like Sessions for using statistics to mislead the public about a new crime wave. One of their primary targets was none other than Sessions’ potential boss, Donald Trump, for saying that, “Decades of progress made in bringing down crime are now being reversed by [the Obama] administration’s roll back of criminal enforcement.”³⁵

But Trump’s assertions were simplistic and wrong.

“The bottom line: Some cities are seeing a rise in homicides,” concluded Mark Holden, general counsel and senior vice president at Koch Industries, and Ronal Serpas, a former superintendent of the New Orleans and Nashville police departments and the chairman of Law Enforcement Leaders to Reduce Crime and Incarceration. “But the country is not experiencing a national murder wave or a reversal in the long trend of decreasing crime.”³⁶

Yet Trump's statement could have come from the mouth of Jeff Sessions. According to the former federal prosecutor, it was Reagan's "war on crime" that led to the drastic drop in murders in America starting in the 1980s.³⁷ Yet there is simply no scholarly consensus over what variables account for the historic decline in crime, despite Sessions' self-assured assertions that aggressive prosecution and harsh sentences were the determining factor.

For Sessions, there may be no mass incarceration crisis in this country, even though the United States jails and imprisons more of its citizens than any other country on the planet. By the close of 2014, America had 1,351,000 people behind bars in state prisons, 646,000 in local jails, and 211,000 in federal facilities—more than 2.2 million people locked in cages—though the federal population has decreased to approximately 190,000 as of December 2016. Sessions' policies would continue these trend lines believing the reduction in crime rates nationally were the product of the carceral state he helped erect.

Sessions has a long legislative record of being "tough on crime." He voted yes to the 1999 juvenile crime bill³⁸, which allowed juveniles as young as 14 to be tried as adults. In 2002, he was skeptical about giving people on death row access to DNA testing³⁹, even after high-profile exonerations came to light. But the senator has shown compassion by co-sponsoring the Fair Sentencing Act, which reduced the sentencing disparity between crack cocaine and powder cocaine from 100 to one to 18 to one.⁴⁰

Nevertheless, Sessions is an ardent supporter of the failed war on drugs. In that same October speech, Sessions also spoke about the lack of federal prosecutions of marijuana offenses in the states that have legalized it.

"[T]he administration has declined to enforce federal drug laws regarding marijuana in Colorado, Washington, and Oregon. It's still a federal offense to deal in marijuana in the United States, and so even though a state doesn't have that law, the federal government does. They said, well, if you don't enforce it, we won't enforce it. Another relaxation of federal law."⁴¹

Not surprisingly, then, Sessions has made clear that he opposes marijuana legalization. At a Senate hearing in April, he stated: "We need grown-ups in charge in Washington to say marijuana is not the kind of thing that ought to be legalized."⁴²

If Sessions becomes the next attorney general and chooses to reverse the Obama administration's decision to avoid unnecessary interference with states' policy decisions on marijuana reform, it will likely have a disparate effect on African-Americans. In June 2013, the ACLU published "The War on Marijuana in Black and White," which found that despite roughly equal usage rates, Blacks were almost four times more likely to be arrested for marijuana possession than whites.⁴³

But Sessions isn't concerned with the devastating consequences that federal marijuana policy has on people, period. In the same April 2016 Senate hearing investigating the Obama administration's enforcement of marijuana laws, Sessions couldn't have been clearer about what he thought of people who use the drug: "Good people don't smoke marijuana."⁴⁴

With only five percent of the world's population, the U.S. has more than 20% of the world's prison population—that makes us the world's largest jailer. Yet the very criminal justice reforms that can help America reduce its incarcerated population have been vigorously opposed by the very man nominated to be the next attorney general. Senators on the judiciary committee should have tough questions for Jeff Sessions and his inclination to lock people up and throw away the key rather than work intelligently and compassionately to provide alternatives to detention that keep all Americans safe and release those people who have more than paid their debt to society.

WOULD JEFF SESSIONS RESPECT RELIGIOUS LIBERTY, ENSURE THAT RELIGIOUS DISCRIMINATION DOES NOT INFECT U.S. LAWS, AND PROTECT AMERICAN MUSLIMS FROM RELIGIOUS DISCRIMINATION?



Photo: ArtWell/Shutterstock

In December 2015, Sen. Patrick Leahy wanted to send a message to presidential candidate Donald Trump. Days earlier, Trump had called for a “total and complete shutdown of Muslims entering the United States until our country’s representatives can figure out what is going on.”⁴⁵ In an effort to push back against Trump’s proposal, Leahy offered a non-binding amendment to clarify that the United States Senate opposed any religious test for immigration as “contrary to the fundamental principles on which this Nation was founded.”

Four senators voted against Leahy’s amendment. One of those was the senator from Alabama, Jeff Sessions, who railed against the amendment for 30 minutes in prepared remarks.⁴⁶

Rather than take Leahy's amendment at face value—that it's un-American to block people from immigrating to the United States based solely on their religious beliefs—Sessions saw it as something far darker. He believed the amendment was "a move toward the ratification of the idea that global migration is a 'human right' and a civil right." He said the amendment would increase the risk of terrorism by making it harder to keep out militants: "This amendment would mean, for instance, that the United States could not favor for entry the moderate Muslim cleric over the radical Muslim cleric." He even suggested that the Leahy amendment would make it harder to keep out people who could become terrorists after immigrating. "Many people are radicalized after they enter," he said. "How do we screen for that possibility, if we cannot even ask about an applicant's views on religion?"⁴⁷

The nominee has expressed bias against the religion of Islam. He has referred to Islam as a "toxic ideology" and called radical Islam a "threat" in supporting his potential boss's temporary ban on immigration from Muslim countries. At other times, however, Sessions has indicated his acknowledgment of religious freedom and his respect for Islam.

Considering these conflicting statements, the Senate Judiciary Committee has an opportunity to clear up what nominee Sessions believes regarding religious freedom and equal protection of Muslims.

Does he agree that religious freedom includes protection from government inquisition into religious beliefs? Does Sessions continue to believe that immigration officials should question immigrants and visitors about their religious beliefs? And if the nominee does believe that, committee members should ask him how such an immigration ban on the basis of religion wouldn't violate the First Amendment's Establishment Clause. Finally, committee members should ask Sessions how he would ensure equal protection under the law for Muslims in the United States—including robust enforcement of the nation's civil rights laws on behalf of Muslims—and whether he would agree that no one should be surveilled or investigated on the basis of their religion or because they happen to be Muslim.

WOULD JEFF SESSIONS CONTINUE THE JUSTICE DEPARTMENT'S FIGHT FOR LGBT EQUALITY?



Over the last few years, the Justice Department has been a consistent and forceful ally in the LGBT movement's fight for full equality under the law. In 2011, Attorney General Eric Holder sent letters to members of Congress explaining that his department would no longer defend the Defense of Marriage Act, which prohibited federal recognition of marriage equality in the states where it was legal because of its unconstitutionality. In 2014, Holder issued a policy memorandum explaining that the Justice Department agrees that the bans on sex discrimination under the Civil Rights Act of 1964 cover anti-transgender discrimination.⁴⁸

Based on Jeff Sessions' record on LGBT equality, it's likely the Justice Department will view LGBT equality very differently. In 2006, Sessions voted for cloture on a constitutional ban on marriage equality. Four years later, he voted against the repeal of "Don't Ask, Don't Tell."⁴⁹ In 2013, Sessions voted against proceeding on a bill that would have granted workplace discrimination protections to LGBT people.⁵⁰ Two years later, he co-sponsored the disingenuous First Amendment Defense Act, which would allow taxpayer-funded LGBT discrimination under the banner of "religious freedom."⁵¹

This record should concern members of the Senate Judiciary Committee who believe the Justice Department has a responsibility to enforce basic civil rights protections for LGBT people. One important question for committee members to ask nominee Sessions is whether he agrees that transgender discrimination is already prohibited under civil rights law. Or will he, if confirmed, do a complete 180 and reverse the department's policy.

They should also ask Sen. Sessions whether he believes same-sex marriage is not only settled law but correct constitutionally. They should further ask whether he will continue the Justice Department's past unequivocal support of the fundamental right to marry or will he switch positions. In addition, Sessions should be asked if his solicitor general's office will support the marriage precedent established by the Supreme Court in 2015. All Americans deserve to know whether the next attorney general of the

United States believes LGBT Americans should go back to being second-class citizens without equal protection under the law.

WOULD JEFF SESSIONS PROTECT VICTIMS OF DOMESTIC VIOLENCE AND SEXUAL ASSAULT?



Photo: KieferPix/Shutterstock

As attorney general, Sessions would be responsible for enforcing federal criminal laws, including laws addressing sexual assault and domestic violence on federal lands. He would also oversee investigations and consent decrees addressing police abuse, including that in Puerto Rico requiring “investigation of reports of sexual assault and domestic violence professionally, effectively, and in a manner free of gender-based bias.” Sessions’ comments and actions raise doubts as to whether he will execute these duties appropriately.

In 2013, Sessions was one of only 22 Republican Senators to vote against reauthorization of the Violence against Women Act.⁵² The act provides for, among other things, investigation and prosecution of violent crimes against women. It was enacted to address the inadequacies of police responses to domestic violence, in particular.

More recently, Sessions was asked to comment on Trump’s hot-mic conversation with Billy Bush, then of Access Hollywood. In the conversation, Trump stated:

“You know, I’m automatically attracted to beautiful—I just start kissing them. It’s like a magnet. Just kiss. I don’t even wait. And when you’re a star, they let you do it. You can do anything... Grab ‘em by the p---y. You can do anything.”

When asked if he would characterize the behavior as sexual assault, Sessions responded, “I don’t characterize that as sexual assault. I think that’s a stretch. I don’t know what he meant.” When asked in follow up, “So if you grab a woman by the genitals, that’s not sexual assault?” Sessions replied, “I don’t know.”⁵³ The Senate Judiciary Committee should clear up this confusion regarding the Trump tape and other issues relating to women’s rights. Senators should ask nominee Sessions again whether it is sexual assault to grab a woman by the genitals. They should also ask him whether he will faithfully support and execute laws prohibiting sexual assault and domestic violence, laws essential for the liberty and equality of women.

WOULD JEFF SESSIONS PROTECT U.S. CITIZENS FROM MASS SURVEILLANCE AND FIGHT TO KEEP THEIR SENSITIVE DATA SAFE?



Photo: 24Nembers/Shutterstock

Following Edward Snowden’s revelation that the National Security Agency had been collecting and storing the metadata from all Americans’ phone calls, a federal appeals court ruled unanimously that the practice was illegal. Soon after, Congress enacted historic bipartisan legislation—the USA Freedom Act—to end the bulk collection of phone records.

Sessions fought and voted against the legislation⁵⁴, just as he has consistently opposed any reforms that would place even modest restrictions on the NSA’s vast spying capabilities. Indeed, in his two decades as a senator, Sessions has repeatedly pushed for greater surveillance authorities than law enforcement and intelligence agencies themselves have asked for⁵⁵.

Sessions has also been fiercely critical of technology companies that provide end-to-end encryption to their customers⁵⁶—a position that President-elect Trump also embraced when he called for a boycott

of Apple products during the company's dispute with the FBI over an encrypted iPhone in the San Bernardino investigation.

Sessions as AG could be an influential figure as Congress begins to debate whether and how to reauthorize the legal provision that allows the National Security Agency to intercept digital communications. The provision, Section 702 of the Foreign Intelligence Surveillance Act, will expire next year unless lawmakers act.

The Senate Judiciary Committee should ask nominee Sessions whether he believes the federal appeals court ruling is wrong and why. Members should also find out whether Sessions would support repeal of the USA Freedom Act as well as what kinds of mass surveillance authorities he would support as attorney general. Finally, the senators should determine whether the nominee would try to undermine companies' ability to encrypt communications, both by seeking court orders to compel companies to undermine the security of their products and by pushing for legislation that would require the companies to place surveillance "back doors" on their devices and platforms.

WOULD SESSIONS FOLLOW THE LAW ON TORTURE?



Photo: US Armed Forces

In June of 2015, the Senate passed a bipartisan amendment to the defense authorization bill reinforcing the prohibition against torture. The proposal, which became law that November, requires all federal agencies to interrogate detainees, other than those picked up for law enforcement purposes, solely through the use of interrogation tactics specified in the Army Field Manual on Interrogations. It also requires prompt notification of the Red Cross whenever a detainee is brought into custody under the laws of war.

During the June vote, a few senators—twenty-one—voted against the measure. One of them was Sen. Jeff Sessions.⁵⁷ This didn’t come as a surprise at the time.

In 2005, Sessions refused to believe that the U.S. was “systematically abusing prisoners” at Guantanamo Bay.⁵⁸ A few months later, he reportedly backed then-Vice President Dick Cheney’s plea to Republican senators to exempt the CIA from a proposed ban on torture.⁵⁹ Back in 2008, he took to the floor of the Senate to say he was glad that the attorney general at the time, Michael Mukasey, “would not say [waterboarding] would never be done again.”⁶⁰

Given Sessions’ views and voting record on torture and abuse, members of the Senate Judiciary Committee should ask whether the man nominated to be the nation’s top law enforcement official is willing to follow the law and enforce the bans against torture and cruel, inhuman and degrading treatment. And they should also ask whether, as attorney general, he will commit to following the recommendations of the Senate Intelligence Committee’s full investigative report on the CIA’s torture program and to applying the lessons it teaches to ensure that torture never happens again.

WOULD JEFF SESSIONS ENFORCE FEDERAL LAW TO PROTECT ABORTION CLINICS?



Photo: andykatz/Bigstock

It is no secret that Jeff Sessions is an opponent of abortion. He has achieved a 100 percent rating from the National Right to Life Committee⁶¹ in years past, and a zero percent rating from NARAL Pro-Choice America.⁶² In 2015, he co-sponsored legislation to defund Planned Parenthood.⁶³

As the next potential attorney general, however, the big question facing Sessions is whether he can put aside his personal beliefs on abortion and prosecute people who have allegedly tried to obstruct people’s entrances to abortion clinics or engaged in violence or threats of force against those who obtain or

provide abortions. Under the Freedom of Access to Clinic Entrances (FACE) Act, people can be criminally prosecuted or sued civilly for preventing people from accessing or providing an abortion through physical obstruction, use of force, or threat of force.

With a spike in violence and threats against abortion clinics last year and an increase in threats against abortion clinics since Trump's election, the members of the Senate Judiciary Committee have a duty to ask nominee Sessions if he will protect the rights of women and providers from those who would seek to deny this constitutional right through obstruction and violence. In addition, Sessions should be asked if his solicitor general's office will support the precedent running from *Roe v. Wade* to the decision in *Whole Women's Health v. Hellerstedt* confirming constitutional protection for the right to an abortion.

CONCLUSION

Both Sessions and Trump talk about "law and order" as being a part of their philosophy. During a campaign rally in July, Donald Trump couldn't have been any clearer: "I am the law and order candidate." The very same words are also commonly associated with Jeff Sessions, the man he has chosen to carry out his "law and order" agenda.

But one's commitment to law and order in a democracy based on individual rights shouldn't be synonym for "tough on crime." It also must include enforcing the U.S. Constitution and the nation's other civil rights laws to ensure all Americans have the equality and freedom necessary to pursue their happiness. We have a proud 50-plus year history of long and aggressive civil rights statutes that are on the books and should be enforced regardless of who is attorney general.

True law-and-order officials should embrace and enforce them all because law and order must also include justice. And all Americans—no matter their race, religion, immigration status, sexual orientation, or gender identity—should have faith that the nation's attorney general will protect them from discrimination and violence, no matter if the perpetrator is a private citizen or a business or the government itself.

If members of the Senate Judiciary Committee do their job well on January 10 and 11, members of Congress and the American public will know if Sen. Jeff Sessions is the most qualified person to be the 84th attorney general of the United States of America. The members of the Senate Judiciary Committee should only vote for Sessions if they truly believe he is up to the task of being the country's highest ranking law enforcement official.

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