



LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
U N D E R L A W

STATEMENT
LAWYERS' COMMITTEE FOR CIVIL
RIGHTS UNDER LAW

RE: OPPOSITION TO SENATOR
JEFFERSON SESSIONS'
NOMINATION TO SERVE AS
ATTORNEY GENERAL OF THE
UNITED STATES



January 9, 2017

Table of Contents

I.	Introduction.....	1
II.	Record on Voting Rights.....	2
	a. White v. Alabama.....	2
	b. The Marion Three Case.....	3
	c. Voting Rights Act of 1965.....	4
III.	Record on Criminal Justice.....	4
	a. Policy Oversight.....	4
	b. Sentencing.....	5
	c. Hate Crimes.....	5
IV.	Lack of Commitment to Judicial Diversity.....	6
V.	Legislative Record on Civil Rights Matters.....	7
VI.	Other Areas of Concern.....	8
VII.	Conclusion.....	9

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Introduction

The Lawyers' Committee for Civil Rights Under Law was founded in 1963 at the behest of John F. Kennedy who called upon the private bar to contribute its time and resources to combat discrimination. We are pleased to present this testimony to the U.S. Senate Judiciary Committee regarding the nomination of Senator Jefferson Sessions to serve as Attorney General of the United States.

The position of the Attorney General is unique in American governance. As the head of the Department of Justice and the nation's top law enforcement officer, the Attorney General has the high duty of vigorously enforcing the law. Enforcement of the nation's civil rights laws is one the most important responsibilities of the Attorney General in inspiring confidence in all communities in the United States, especially at a time, like now, when racial divide and tensions are increasing. This responsibility is of special importance to fulfilling the mission of the Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee"). As Senator Bingaman explained during Senate debate on another nominee, the Attorney General is uniquely situated within the President's cabinet:

"The position of Attorney General is not comparable to other Cabinet positions. As head of the Department of Justice, the Attorney General has enormous independent responsibility and authority, neither of which is subject directly to direction by the President Historically, the Attorney General is the officer who has enforced the Voting Rights Act and the other civil rights laws which have transformed our nation for the better in the last half century. Given the great power which has been lodged in this office, it is important that the American people have confidence in the fairness and impartiality of the occupant of that office."

- Congressional Record, 01/31/2001, S872

At this time, our country needs an Attorney General who has a record of supporting civil rights laws and the principles underlying them, and taking actions that demonstrate this commitment. Unfortunately, the nomination of Senator Sessions to be Attorney General is a major step backwards in fulfilling this critical responsibility. His long record of hostility to civil rights enforcement makes him the wrong choice to serve as this nation's Attorney General.

Initially, it is important to take note of Senator Sessions' effort to claim that he was a strong enforcer of voting rights and school desegregation laws when he was Attorney General of Alabama and U.S. Attorney. In his recent response to a question in the Committee's questionnaire for his confirmation hearings, he was asked to list the "ten most significant litigated matters that [he] personally handled." Senator Sessions' response to this question listed three voting rights cases and one school desegregation case. But, as pointed out in a recent editorial in the *Washington Post*, three former attorneys of the Department's Civil Rights Division (including one Lawyers' Committee attorney) who personally handled three of the four cases stated "categorically that Senator Sessions had no substantive involvement in any of them." Rather he did "what any U.S. attorney would have had to do: signed his name on the complaint, and have his name added on any motions or briefs. That's it." In fact, in responding to a previous questionnaire from the Judiciary Committee, he did not even mention these cases.

A more accurate picture of Senator Sessions' commitment to civil rights is demonstrated by the historical record.

Record on Voting Rights

One of the top priorities of the Lawyers' Committee for Civil Rights Under Law is ensuring compliance with the Voting Rights Act of 1965. Senator Sessions' political career demonstrates hostility towards the principles underlying civil rights laws that spans over thirty years.¹ In response to the Supreme Court's 2013 decision in *Shelby County v. Holder* which gutted Section 5 of the Voting Rights Act, Senator Sessions stated, "but now if you go to Alabama, Georgia, North Carolina, people aren't being denied the vote because of the color of their skin." However, the ongoing work of the Lawyers' Committee indicates otherwise. Indeed, we have filed voting rights lawsuits in all three states in the past year alone. In Alabama, we filed suit alleging that the method of electing Alabama's most powerful judges violates the Voting Rights Act.¹ In Hancock County, Georgia, we filed suit in 2015 to stop the attempted purge of African-American voters from the voting rolls, and obtained a court order requiring that those wrongly struck from the register be placed back on the rolls.² Also in Georgia, we and other organizations filed suit in 2016 to stop the improper rejection of over 40,000 voter registration applications, predominately filed by African Americans, resulting in an agreement by the State to allow the applicants to vote.³ And also in 2016, the Fourth Circuit Court of Appeals ruled that an array of voter suppression laws enacted by the North Carolina Legislature were passed with the intent to discriminate against African Americans.⁴

While Senator Sessions voted in favor of reauthorizing the expiring provisions of the Voting Rights Act in 2006, during his 1986 confirmation hearing, Senator Sessions described the Act as a "piece of intrusive legislation." This disdain for one of our nation's most important federal civil rights laws is particularly problematic at a moment in which we continue to see ongoing voting discrimination and voter suppression across our country. Furthermore, he has a deep history of opposing and undermining cases on behalf of traditionally disenfranchised voters. Those cases include the following:

White v. Alabama

This past September, the Lawyers' Committee filed a new federal voting rights lawsuit in Senator Sessions' home state of Alabama concerning the at-large method of election that has long been used for the state's three highest courts. The predecessor to our case, *White v. Alabama*, was initiated in 1994 by a group of African American voters who asserted the same Voting Rights Act violation as our current case – that the at-large system of electing Alabama appellate judges violated Section 2 of the Act. The statewide at-large method of electing these

¹ *NAACP v. State of Ala.*, 2:16-cv-00731 (M.D. Ala. 2016).

² *Georgia State Conference of the NAACP, et al., v. Hancock County Board of Elections and Registration, et al.*, 5:15-cv0414-CAR, M.D. GA.

³ *NAACP, et al., v. Kemp, et al.*, 2:16-cv-219-WCO, N.D.GA.Gainesville Div.

⁴ *N. Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016).

judges, combined with the enduring presence of racially polarized voting in the state, ensures that most every elected appellate judge in Alabama is the candidate of choice of the white majority. At that time of the *White* litigation, only one of the nineteen appellate judges in Alabama was African-American even though African Americans comprised over 25% of the State's population. For the previous 125 years, only two African Americans, both of whom were appointed by the Governor, had served as an appellate court judge.⁵

In October 1994, a federal district court approved a settlement in the *White* case which had been negotiated by the then-State Attorney General of Alabama, Jimmy Evans. The settlement was designed to provide significant African American representation on the Alabama judiciary for the first time in the state's history. At the time of the settlement, Senator Sessions was running for Alabama Attorney General against Evans and vigorously opposed the agreement, including making an appearance before the district court in opposition when the court was reviewing the matter.

Subsequently, Senator Sessions was elected as the new Alabama Attorney General and soon after, when the case was on appeal, he reversed the position of the previous Alabama Attorney General and urged a panel of federal circuit judges to reject the settlement, arguing that he could not defend the terms agreed to by his predecessor and approved by the district court because they improperly focused on race. The court subsequently vacated the settlement,⁶ but Sessions made no further efforts at reaching an acceptable settlement. The alleged Section 2 Voting Rights Act violation was not further pursued, either when Senator Sessions was the Alabama Attorney General or any time since, until the recent filing of our case.

Today, twenty years later, there is not one African American appellate judge in Alabama. All nineteen are white. Because of this continued lack of minority representation, we filed our suit in an attempt to finally bring the three highest courts in Alabama into compliance with the Voting Rights Act. Once again we argue that the at-large election method used to select appeals court judges unlawfully dilutes the voting strength of African Americans and prevents them from electing candidates of their choice.⁷

Senator Sessions' rejection of the settlement in the *White* case resulted in a discontinuation of that case and the continuation of an all-white judiciary in Alabama. Our lawsuit reflects the importance of addressing, through the Voting Rights Act, discrimination which has historically been the cause of the complete lack of minority representation on Alabama state courts. It is an example of the kind of voting discrimination that we continue to see in many communities across our country.

The Marion Three Case

In 1985, during his tenure as U.S. Attorney for the Southern District of Alabama under then President Ronald Reagan, then Attorney General Sessions pressed charges against eight residents from Greene and Perry counties, accusing them of altering absentee ballots. Of the

⁵ *White v. State of Ala.*, 867 F. Supp. 1519, 1527 (M.D. Ala. 1994).

⁶ *White v. State of Ala.*, 74 F.3d 1058 (11th Cir. 1996).

⁷ *NAACP v. State of Ala.*, 2:16-cv-00731 (M.D. Ala. 2016).

accused, seven out of eight of were black. Among the group were longtime civil rights activist Albert Turner, of the Southern Christian Leadership Conference, his wife Evelyn Turner, and fellow activist Spencer Hogue – later known as the Marion Three – who had long conducted voter registration drives throughout rural Black Belt counties, aiming to boost registration rates among poor and elderly African Americans. Turner became known as “Mr. Voter Registration,” and is credited with the African American community’s gain of political control in many counties in the Alabama Black Belt. On the basis of highly questionable evidence of an effort by the Marion Three and others to commit voter fraud, Senator Sessions dispatched dozens of FBI agents to repeatedly visit homes of rural black residents. The countless hours of interrogation yielded only 14 allegedly tampered ballots out of more than 1.7 million cast statewide in the 1984 election. When brought to trial for the alleged crimes, Federal District Judge Emmett Cox dismissed 50 counts against the defendants due to lack of evidence and all the remaining counts resulted in an acquittal by the jury. In other words, what was clearly a major effort by then Attorney General Sessions to prosecute alleged “voter fraud” was based on flimsy or nonexistent evidence.

The approach of Senator Sessions in this case is particularly troubling in the context of repeated claims of “voter fraud” when the overwhelming evidence is that there are but a handful of such cases around the country. The Justice Department will be responsible for overseeing these claims and the responses of the states to them. Consequently, the next Attorney General must be fair-minded and trusted by the entire country in evaluating these claims.

Voting Rights Act of 1965

The Lawyers’ Committee knows the reality of voting discrimination and voter suppression all too well having filed more than 12 such cases in 2016 alone. Our nation deserves an Attorney General who recognizes the existence of voting discrimination and who will use the Voting Rights Act as a tool to confront it. There is no evidence in Senator Sessions’ record that suggests he would bring any commitment to attacking voting discrimination. In fact, he denies its existence in many states with the most egregious histories of such discrimination.

Record On Criminal Justice

The Department of Justice enforces federal criminal laws, including criminal laws that protect our civil rights; it operates a prison system; and it enforces civil laws protecting us from civil rights violations committed by law enforcement agencies. Prosecuting hate crimes, creating trust between minority communities and law enforcement, and reducing the over-incarceration of minority men and women are essential to unifying our country. Today, approximately 211,000 people are locked up in federal prisons, according to data from the Prison Policy Initiative. Below is an overview of pressing criminal justice issues that must continue to be national priorities but would likely be disregarded by Senator Sessions.

Police Oversight

In response to a string of police-involved shootings of civilians, the Justice Department utilizes its powers to investigate law enforcement agencies accused of a “pattern or practice” of

violating civil rights. When the Justice Department identifies civil rights violations, the Department may bypass litigation and enter into consent decrees with the offender agencies to resolve the pattern or practice of unconstitutional or otherwise unlawful conduct. In a new report issued on January 4, 2017, the Justice Department confirmed that there are currently 18 open agreements in pattern or practice policing cases, including 14 court-enforced consent decrees. In the introduction to a 2008 paper published by the Alabama Police Institute, Senator Sessions condemned such interventions as an abuse of federal authority.⁸ “Consent decrees have a profound effect on our legal system as they constitute an end run around the democratic process,” he wrote. This statement suggests that Senator Sessions will not carry forward the critical work of the Justice Department in this area and may abandon the pattern or practice violations addressed by the 18 existing agreements. Such a result would dismantle years of work to restore constitutional policing practices at offending law enforcement agencies across the country.

Sentencing

The Attorney General guides U.S. attorneys toward stricter or more lenient sentences through charging memos. While individual U.S. attorneys have some discretion, the Attorney General sets the tone for use of that discretion. Former Attorney General Eric Holder advised against piling on charges for low-level drug offenders and seeking maximum sentences, a policy Senator Sessions is unlikely to continue. Senator Sessions was a longtime supporter of eliminating sentencing discrepancies between crack and cocaine offenders, but he helped block broader drug sentencing reform in the Senate in 2016 despite wide bipartisan support, saying it would release “violent felons” into the street.

Today, the United States comprises just 5% of the world’s population but it incarcerates almost 25% of all of the world’s prisoners. In 2010 alone, state and federal governments spent \$80 billion on incarceration. Of the 216,000 current federal inmates, nearly half are serving time for drug-related crimes.

If confirmed, Senator Sessions will likely reverse the significant progress that has been made to adjust sentencing ranges for low-level drug offenders, destroying years of efforts to reduce federal prison populations and rein in federal prison spending while directing limited federal resources towards more serious threats to public safety.

Hate Crimes

Senator Sessions fiercely opposed the 2009 Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act. The Act extended federal hate crime protections to people victimized because of their sexual orientation, gender or gender identity, or disability. The law mandates that the Attorney General – or a designee – sign off on all criminal prosecutions brought under the Act. In a speech on the Senate floor in July 2009, Senator Sessions agreed that people should not be attacked because of their sexual orientation or gender, but he argued that federal prosecution of such attacks was unnecessary because there was no evidence that they weren't

⁸ <http://www.alabamapolicy.org/wp-content/uploads/API-Research-Consent-Decrees.pdf>

being prosecuted adequately at the state and local levels. The incoming Attorney General will be in a position to effectively neutralize the protections the law affords.

But, we have seen a significant uptick in the number of hate crimes and hate-inspired incidents across the country in the last several weeks of 2016. While no official FBI data on this period has yet been produced, these incidents have been well documented and recorded by media. This moment requires an Attorney General who brings a deep commitment to aggressive enforcement of our nation's laws addressing hate to help turn the tide on this pattern of growing hostility and intolerance. Senator Sessions' record raises grave concerns that he would bring such commitment to the job.

Lack of Commitment to Judicial Diversity

Senator Sessions' actions in the *White* case also reflect his lack of commitment to the importance of diversity at every stage of the country's judicial system. The Lawyers' Committee's Judicial Diversity Program seeks to improve the judicial system through increased representation from people of diverse backgrounds working on the judicial bench.⁹ Judicial diversity is especially important in maintaining and increasing public confidence in the legitimacy of the courts. As the American Bar Association's Judicial Division has stated:

"The public's trust and confidence in the justice system is enhanced when they see that the judges deciding their cases resembles the vast racial, ethnic, and cultural groups that make up American society. Likewise, a diverse judicial branch expands an individual judge's perspective in making decisions that impact a diverse population."

American Bar Association, Judicial Division

As a United States Senator, Senator Sessions' opposition to judicial diversity has not been limited to the Alabama appellate judiciary. An African American has never served in the Alabama seat of the 11th Circuit Court of Appeals. Earlier this year, President Obama nominated Abdul Kallon to serve on the 11th Circuit, a nomination applauded by the Lawyers' Committee. If confirmed he would have become the first African American federal court of appeals judge from Alabama. However, even though the vacancy on the Court of Appeals has been declared a judicial emergency,¹⁰ Senator Sessions continued his anti-judicial diversity stance and refused to support the nomination.

Senator Sessions' hostility to judicial diversity is significant because of the Justice Department's critical role in evaluating judicial nominees by way of the Office of Legal Policy's role in advising the President on nominations for Article III judgeships.

⁹ <https://lawyerscommittee.org/project/public-policy/judicial-diversity/>

¹⁰ <http://www.uscourts.gov/judges-judgeships/judicial-vacancies/judicial-emergencies>

Legislative Record On Civil Rights Matters

On a range of civil rights matters concerning race, gender and immigrants' rights, Senator Sessions has consistently and often stood opposed.

In 2015, Senator Sessions supported the Stop Sanctuary Policies and Protect Americans Act, which would have prohibited sanctuary jurisdictions from receiving federal grant money.¹¹

In 2013, Senator Sessions voted against the 2013 reauthorization of the Violence Against Women Act. A bill signed into law by President Obama, VAWA 2013 recognized tribes' inherent power to exercise "special domestic violence criminal jurisdiction" over certain defendants, regardless of their Indian or non-Indian status, who commit acts of domestic violence or dating violence or violate certain protection orders in Indian country.¹²

In 2013, Senator Sessions opposed the bipartisan immigration reform bill that passed the Senate. When it passed, he published an "Immigration Handbook for the New Republican Majority" to assist efforts to defeat the bill in the House, and has updated the handbook to oppose subsequent efforts to enact immigration reform.¹³

In 2013, Senator Sessions supported an amendment to the Employer Non-Discrimination Act of 2013. The amendment exempts religiously affiliated employers from the prohibition on employment discrimination based on sexual orientation and gender identity.¹⁴

In 2012, Senator Sessions did not support The Convention on the Rights of Persons with Disabilities. The purpose of the Treaty was to ensure that the equality of treatment and nondiscrimination, precepts anchored in the United States Constitution are extended to all citizens, including those with disabilities.¹⁵

In 2011, Senator Sessions opposed the reauthorization of the Violence Against Women Act of 2012.¹⁶

In 2010, Senator Sessions voted against a motion for cloture on a bill to amend the Fair Labor Standards Act of 1938 to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex, and for other purposes.¹⁷

In 2009, Senator Sessions voted against the Lilly Ledbetter Fair Pay of 2009. The bill – which was the first piece of legislation that President Obama signed into law – amended the Civil

¹¹ <https://www.congress.gov/bill/114th-congress/senate-bill/2146>

¹² <https://www.govtrack.us/congress/bills/113/s47/text>

¹³ http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=113&session=1&vote=00168

¹⁴ <https://www.congress.gov/amendment/113th-congress/senate-amendment/2013>

¹⁵ <https://www.congress.gov/treaty-document/112th-congress/7/>

¹⁶ <https://www.congress.gov/bill/112th-congress/senate-bill/1925/text>

¹⁷ <https://www.congress.gov/bill/111th-congress/senate-bill/3772>

Rights Act of 1964 to ensure that the statute of limitations does not unfairly bar claims of pay disparity based on gender discrimination.¹⁸

In 2006, Senator Sessions supported a federal constitutional amendment to ban same-sex marriage. He voted to invoke cloture and move to a final vote on the amendment, which fell 11 votes short of the 60 it needed to pass.¹⁹

In 2006, Senator Sessions voted with a unanimous Senate to reauthorize the Voting Rights Act of 1965, but he has criticized the landmark civil rights law as "intrusive," and agreed with the Supreme Court's 2013 decision, *Shelby County, Alabama v. Holder*, that struck down key provisions of the law.

In 2002, Senator Sessions voted against a bill that would have expanded the definition of hate crimes to incorporate acts committed because of a victim's sex, sexual orientation or disability and permit the federal government to help states prosecute hate crimes even if no federally protected action was implicated. He voted not to invoke cloture and move to a final vote on the amendment, which fell 6 votes short of the 60 it needed to pass.²⁰

In 1997, Senator Sessions co-sponsored the Civil Rights Act of 1997, a bill which would eliminate affirmative action by the federal government in connection with federal contracts, employment, or other programs by the activities.²¹

In addition to his consistent opposition to important federal civil rights legislation, he has also consistently opposed the nominations of African Americans, Latinos and other minorities to Senate-confirmed positions including Justice Sonia Sotomayor, United States Attorney General Loretta Lynch, Assistant United States Attorney General for the Civil Rights Division Bill Lann Lee, among others.

Other Areas of Concern

The Attorney General leads the nation's largest law enforcement agency, comprised of more than 113,000 employees. That said, a court found that grave prosecutorial misconduct was carried out by members of the far smaller Alabama State Attorney General's Office (approximately 200 total employees today) during Senator Sessions' term as State Attorney General. In *State of Alabama v Tico* (Jefferson County, Alabama 1996), the court found that the "misconduct of the Attorney General in this case far surpasses in both extensiveness and measure the totality of any prosecutorial misconduct ever previously presented to or witnessed by this court." The court concluded that members of the State Attorney General's Office either refused or failed to turn in exculpatory evidence when requested; failed or refused to comply

¹⁸http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=109&session=2&vote=00163

¹⁹http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=109&session=2&vote=00163

²⁰http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=107&session=2&vote=00147

²¹<https://www.govtrack.us/congress/bills/105/s950/text>

with previous discovery orders issued by the court; and repeatedly lied to the court, denying the existence of evidence, which was later discovered by the defense. The court also found the use of deceptive testimony; imposition of false charges; a flagrant disregard of the constitutional rights of the accused parties; and complete disregard of the law when issuing a subpoena demanding that witnesses appear before a jury and testify, among other things.

Prosecutorial misconduct of this magnitude is an area that warrants closer examination as the Senate considers his integrity and fitness for the chief law enforcement role in our nation. The Senate must consider what role, if any, Sessions had in the conduct described in this case and whether his actions, or failure to act, suggest that he would effectively address any similar misconduct by Justice Department employees.

Conclusion

Senator Sessions' public record demonstrates a deficient commitment to upholding and enforcing the Constitution and civil rights laws, ensuring equal justice under the law and promoting the rule of law. His record makes clear he will not be a vigorous force in promoting the causes of racial and gender equality to which this nation must be committed. Furthermore, the grossly inadequate completion of Senator Sessions' Senate Judiciary Committee Questionnaire demonstrates a failure to understand the importance and necessity of a thorough and honest vetting of our next Attorney General. Now more than ever, it is essential that the American people believe in the integrity of this position. For these reasons and more, the Lawyers' Committee for Civil Rights Under Law issues this statement in opposition to Senator Jeff Sessions' nomination to serve as United States Attorney General.

About the Lawyers' Committee for Civil Rights Under Law

The principal mission of the Lawyers' Committee for Civil Rights Under Law is to secure equal justice for all through the rule of law, targeting in particular the inequities confronting African Americans and other racial and ethnic minorities. The Lawyers' Committee is a nonpartisan, nonprofit organization, formed in 1963 at the request of President John F. Kennedy to enlist the private bar's leadership and resources in combating racial discrimination and the resulting inequality of opportunity – work that continues to be vital today. Among its major areas of work are Educational Opportunities, Fair Housing & Community Development, Voting Rights, Criminal Justice Initiative, Economic Empowerment and Immigrant Rights. Since its inception, the Lawyers' Committee has been committed to vigorous civil rights enforcement, the pursuit of equal justice under law, and fidelity to the rule of law. Thus, the Mission and activities of the Lawyers Committee significantly overlap with those of the Attorney General.