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**TESTIMONY OF CORNELL WILLIAM BROOKS,
PRESIDENT AND CHIEF EXECUTIVE OFFICER OF THE NATIONAL ASSOCIATION FOR
THE ADVANCEMENT OF COLORED PEOPLE (NAACP)**

on the

NOMINATION OF

JEFFERSON "JEFF" BEAUREGARD SESSIONS III

to be

ATTORNEY GENERAL OF THE UNITED STATES

before the

SENATE JUDICIARY COMMITTEE

January 11, 2017

Good morning Chairman Grassley, Ranking Member Feinstein, and esteemed Senators of this committee. On behalf of the Board of Directors of the National Association for the Advancement of Colored People (NAACP), and its units and members across the country and abroad, I am honored to present this testimony regarding the announced nomination of Senator Sessions to serve as the 84th Attorney General of the United States.

Founded almost 108 years ago, in February of 1909, the NAACP is our nation's oldest, largest, and most widely-recognized grassroots-based civil rights organization. We currently have more than 2,200 membership units across the nation, with members in every one of the 50 states as well as units on overseas military bases.

Along with our community-based adult units, we also have youth and college units in hundreds of communities and schools across the country as well as units in prisons.

Through programs and projects in its substantive “game-changer” areas, criminal justice, economic opportunity, education, health, civic engagement, political advocacy, international affairs and youth empowerment, the NAACP works across the substantive spectrum of civil rights to advance the cause of social justice and equality for all Americans.

The Attorney General of the United States is a position of critical importance to the NAACP, as well as to the nation as a whole. Not only does the Attorney General oversee laws, policies and programs that are crucially important to underserved communities, but he or she represents the American ideal of equal justice and equal protection under the law. From the dark days of racist lynchings in the South, through the years of Jim Crow laws, to the present, with racially-motivated crimes on the rise, voter suppression alive and well, and racialized policing increasingly rearing its ugly head, the Attorney General of the United States is the highest ranking government official entrusted to pursue justice over and above partisan political influences and objectives. As such, the Attorney General must, through words and deeds, inspire confidence that he or she will protect the rights and interests of all persons, regardless of race, ethnicity, gender, disability, religion, age, point of national origin, or socio-economic station in life, especially those who are unable to protect themselves.

We take no pleasure in stating that, in the view of the NAACP, Senator Sessions’ record conclusively demonstrates that he lacks the judgment and temperament to serve effectively as Attorney General of the United States. Senator Sessions’s record throughout his career, whether in the office of the U.S. Attorney for the Southern District of Alabama, as Attorney General for the state of Alabama, or most recently as the junior U.S. Senator from Alabama, evinces a clear disregard, disrespect, and even disdain for the civil and human rights of racial and ethnic minorities, women, the disabled, and others who suffer from discrimination in this country.

Based on his record and his statements, the NAACP strongly believes that confirmation of Senator Sessions as Attorney General would be bad for America and could exacerbate already deepening racial divisions in this country. Rather than being perceived as the protector of civil rights, civil liberties, religious freedoms and

voting rights, the Department of Justice under the leadership of Senator Sessions could easily be seen as indifferent (at best) to the racial, ethnic, gender, disability, sexual orientation and religious discrimination that continues to plague our great nation. Indeed, the Senator's record shows a striking disregard for the very laws, policies, and programs he would be responsible for enforcing, overseeing and protecting as Attorney General, and his statements reflect complete disdain for groups, including the NAACP, that have long worked to protect the civil rights and liberties of all Americans. Moreover, his record demonstrates that he is out of step with even the most conservative members of Congress. Based on his record, Senator Sessions should not hold the position of Attorney General of the United States.

SENATOR SESSIONS'S VOTING RECORD IN THE U.S. SENATE AND RECORD AS A FEDERAL PROSECUTOR DEMONSTRATES HIS HOSTILITY OR INDIFFERENCE TO CIVIL RIGHTS PROTECTIONS

Perhaps the best evidence of Senator Sessions's troubling views and approach towards civil rights is his voting record during his 19 years in the United States Senate. Below we detail our concerns regarding Senator Sessions's record in the areas of (1) voting rights; (2) hate crimes; (3) violence against women and women's health care; (4) opposition to sensible gun control laws; (5) opposition to community policing and policing reform; (6) Americans' right to privacy; and (7) his voting record on Judicial nominees . In each of these areas, Senator Sessions has failed to support the creation or expansion of laws and programs that would increase civil rights protections and/or has affirmatively taken actions to retard the protection of civil rights.

1. Voting Rights

Protecting the right to free and fair access to the ballot is a foundational principle to our representative form of government. Through enforcement of the Voting Rights Act of 1965, the Attorney General of the United States is ultimately responsible for ensuring that no citizen's right to cast a ballot will be abridged on the basis of race. Through "America's Journey for Justice," the NAACP recently marched 1002 miles, from Selma, Alabama to Washington, D.C. to bring attention to the pressing need for

restoration of Section 4(b) of the Voting Rights Act. Indeed, the NAACP is among the premier advocates for voting rights in this country, having secured or assisted in securing victories in several critically important federal voting rights cases during the past year alone.¹

Rather than protect the right of eligible citizens to vote, Senator Sessions has in the past used the power of the Department of Justice to intimidate and criminally prosecute those who lawfully assisted elderly citizens in casting their ballots. In 1985, as United States Attorney for the Southern District of Alabama (a component of the Justice Department), Senator Sessions brought criminal fraud prosecutions against three civil rights activists in Alabama who were helping elderly African-American voters complete absentee ballots.² A jury unanimously acquitted all three defendants of all of the charges against them, in deliberations that lasted only a few hours. While the prosecution was unsuccessful, the chilling effect on voting rights activists was substantial, as the defendants faced 29 counts with sentences totaling up to 250 years.³ Given the responsibility of the Attorney General of the United States to vigorously enforce the Voting Rights Act and otherwise to protect the right of access to the ballot, we respectfully submit that Senator Sessions's misguided, unwarranted and failed prosecution of civil rights activists who were merely assisting others in the casting of absentee ballots should disqualify him, *per se*, from serving as Attorney General of the United States. We simply have no confidence, given his record, that Senator Sessions could fairly enforce the Voting Rights Act to protect the rights of African-American voters.

We acknowledge that in 2006, Senator Sessions joined all of his Senate colleagues in supporting the reauthorization of portions of the 1965 Voting Rights Act which

¹ See North Carolina NAACP v. McCrory, Case No. 16-1468 (4th Cir. Jul. 29, 2016) (holding the State imposed voting restrictions with a racially discriminatory purpose); Texas NAACP v. Perry (combined with Veasey v Abbott), Case No. 14-41127 (5th Cir. Jul. 20, 2016) (holding the Texas' photo voter identification requirement had a discriminatory effect on minority voters); League of Women Voters, et. al. v. Newby, No. 16-5196 (D.C. Cir. Sept. 26, 2016) (holding that an imposition of documentary proof of citizenship requirement violated the Administrative Procedure Act); and Missouri State Conference NAACP v. Ferguson-Florissant Sch. Dist., Case No. 4:14 CV 2077 (E.D. Mo. Aug. 22, 2016) (Dist Ct. holding that the at-large voting systems for school board members violates Sect. 2 of the Voting Rights Act of 1965).

² U.S. v. Albert Turner, et al., Criminal No. 85-00014 (S.D. Ala. 1985).

³ Drew Griffin, *Woman Prosecuted Sen. Sessions Can't Forgive* (Jan. 6, 2017 11:19 A.M.), <http://www.cnn.com/2017/01/06/politics/marion-three-jeff-sessions/>.

extended certain provisions for twenty-five years (the vote was unanimous; 98 to 0). It bears mentioning, however, that prior to passage of this important legislation, Senator Sessions had alerted his colleagues that he intended to offer an amendment to the reauthorization bill which would have substantially have weakened Section 5.⁴ While he did not ultimately offer his amendment, the incident suggests that Senator Sessions is an “outlier” on the issue of voting rights, a view that is supported by his previous reference to the 1965 Act (as reported in *The Nation* magazine) as “a piece of intrusive legislation.”⁵ Likewise, in 2013, he said that the 2006 extension of portions of the Voting Rights Act was “probably too long an extension because there’s just huge areas of the South where there’s no problem.”⁶ Not surprisingly, he lauded the U.S. Supreme Court’s 2013 decision effectively eviscerating portions of the Voting Rights Act and called it “good news, I think, for the South.”⁷ Furthermore, despite the Supreme Court’s direction to Congress to update the Act to restore the protections that were struck down, Senator Sessions has opposed all such efforts in the U.S. Senate.

Equally disturbing is Senator Sessions’s strong support for photo identification voting requirements, despite the fact that up to 21 million Americans, or 11% of the entire voting-eligible population, do not have government-issued photo IDs.⁸ A disproportionate number of those who do not have government-issued photo identification are racial and ethnic minorities, the elderly, students, or low-income Americans.⁹ A full 25% of African Americans who would otherwise be eligible to

⁴ R. Neal, *Voting Rights Act Extension Stalls*, Facing South (May 16, 2006), available at, <https://www.facingsouth.org/2006/05/voting-rights-act-extension-stalls.html> (quoting Sen. Sessions discussion on changing Section 5 of the VRA to either remove Alabama or extend it to northern states, such as Boston).

⁵ Ari Berman, *Jeff Sessions, Trump’s Pick for Att’y Gen., is a Fierce Opponent of Civil Rights*, *The Nation* (Nov. 18, 2016), available at, <https://www.thenation.com/article/jeff-sessions-trumps-pick-for-attorney-general-is-a-fierce-opponent-of-civil-rights/>; See Also Nomination of Jefferson B. Sessions, III to be U. S. Dist. Ct. J. for the S.D. Ala.: Hearings Before the Committee on the Senate Comm. on the Judiciary, 99th Cong. 1047, at. 159 (1986) (statement of Jefferson B. Sessions).

⁶ 152 Cong. Rec. S7,986 (Daily Record July 20, 2006) (statement by Senator Jeff Sessions), available at, <https://www.congress.gov/congressional-record/2006/7/20/senate-section/article/s7949-6?r=37>.

⁷ Meredith Shiner, *Can Cong. Fix the Voting Rights Act?*, Roll Call, June 25, 2013, available at, http://www.rollcall.com/news/can_congress_fix_the_voting_rights_act-225935-1.html (last accessed January 5, 2017)

⁸ Brennan Ctr. for Justice at New York Univ., *Election 2016: Restrictive Voting Laws By the Numbers*, Sept. 28, 2016, <http://www.brennancenter.org/analysis/election-2016-restrictive-voting-laws-numbers> (last accessed January 5, 2017).

⁹ *Id.*

vote, do not have qualified, government issued photo identification.¹⁰ Yet, despite the concerns about the racially disparate impact of requiring photo identification for voting, in 2006, 2007 and again in 2013 (every time a vote on the subject was taken), Senator Sessions voted in favor of requiring federal “photo identification” from all voters.¹¹ It bears noting here that the U.S. Court of Appeals for the Fourth Circuit and the U.S. Court of Appeals for the Fifth Circuit, among others, have ruled that such state-imposed photo identification requirements violate Section 2 of the Voting Rights Act.¹² While Senator Sessions and others have pointed to alleged “voter fraud” as a justification for requiring photo identification for voters, documented instances of voter impersonation are extremely rare (only 37 alleged instances out of 1 billion votes cast between 2000 and 2014.)¹³

2. Opposition to Hate Crimes Prevention Legislation

Senator Sessions’s votes regarding the strengthening and expansion of Hate Crimes Prevention Act likewise demonstrate a profound disregard or lack of appreciation for the worsening problem of hate crimes based on race, ethnicity, religion, sexual orientation and other immutable characteristics. As this committee is well aware, hate crimes remain a very serious problem in the United States; and the problem appears to have been exacerbated by the vitriolic rhetoric of the recent national

¹⁰ The Advancement Project: *What’s Wrong with This Picture? New Photo ID Proposals Part of a National Push to Turn Back the Clock on Voting Rights*(Apr. 13, 2011), at ii, available at, <http://www.advancementproject.org/resources/entry/whats-wrong-with-this-picture-new-photo-id-proposals-part-of-national-push>.

¹¹ See Roll Call Vote On the Motion to Table McConnell Amdt No. 4085 (May 23, 2006) (Sen. Sessions voting no table amendment), available at http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=109&session=2&vote=00143); Vote on Senate Amdt 1170 (Jun. 5, 2007) (Sen. Session voting yes to require photo identification for persons voting in person in federal elections), available at, http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=110&session=1&vote=00184; Voting on Senate Admt. 526 (Mar.23, 2013) (Sen. Sessions voting yes to establish a fund to require photo ID for voting in federal elections, available at, http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=113&session=1&vote=00083.

¹² See *NC NAACP v. McCrory*, *supra*; *Veasey v. Abbott*, *supra*

¹³ Justin Levitt, *A Comprehensive Investigation of Voter Impersonation finds 31 Credible Incidents Out of One Billion Ballots Cast*, The Washington Post (Aug. 6, 2014), available at, https://www.washingtonpost.com/news/wonk/wp/2014/08/06/a-comprehensive-investigation-of-voter-impersonation-finds-31-credible-incidents-out-of-one-billion-ballots-cast/?utm_term=.7b68ac4f0386.

election and is thus on the rise.¹⁴ This form of domestic terrorism is designed to intimidate whole communities on the basis of personal and immutable characteristics – and can spark conflicts that are damaging not only to the victims most directly affected but also to the very fabric of our society. Indeed, according to FBI statistics, a total of 5,818 hate crimes were committed in 2015, a 6% increase from 2014.¹⁵ The increase was largely due to an increase of hate crimes against Muslims; however, the largest percentage of race-based crimes were committed against African Americans.¹⁶ Nearly 60% of all hate crimes were based on race, ethnicity, or national origin.¹⁷ Despite these alarming statistics, in 2000, and again in 2002, 2004, 2007, and 2009 (every time a roll call vote on the subject was taken in the full Senate) Senator Sessions voted against expanding and strengthening the “Hate Crimes Prevention Act.”¹⁸ The *Matthew Shepard, James Byrd Jr. Hate Crimes Prevention Act*, which was finally enacted, despite and over Senator Sessions’s objections, allows the federal government, through the U.S. Department of Justice, to work with state and local authorities to prevent, investigate, solve, and if necessary, punish hate crimes to the fullest extent possible. The expanded law specifically covers hate crimes against women, LGBT people, and people with disabilities.

Given his overall civil rights record and his specific opposition to the strengthening protections against hate crimes, the NAACP seriously questions whether Senator Sessions would vigorously prosecute federal hate crimes.

¹⁴ Southern Poverty Law Center, *Ten Days After: Harassment and Intimidation in the Aftermath of the Election*, (Nov. 29, 2016) <https://www.splcenter.org/2016/11/29/ten-days-after-harassment-and-intimidation-aftermath-election>.

¹⁵ Eric Lichtblau, *U.S. Hate Crimes Surge 6%, Fueled by Attacks on Muslims*, *The New York Times* (Nov. 14, 2016), available at, http://www.nytimes.com/2016/11/15/us/politics/fbi-hate-crimes-muslims.html?_r=0.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See Roll Call vote, Jun. 20, 2000, *available at*, http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=106&session=2&vote=00136; Sen. Roll Call vote (Jun. 11, 2002), *available at* http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=107&session=2&vote=00147; Jun. 15, 2004, *available at*, http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=108&session=2&vote=00114; Sept. 27, 2007, *available at*, http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=110&session=1&vote=00350; and Jul. 16, 2009, *available at*, http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=111&session=1&vote=00233

3. Violence Against Women and Disregard for Women's Healthcare

Senator Sessions's record in the U.S. Senate demonstrates a lack of concern and/or lack of understanding of the unique threats and challenges facing women in this country. According to the National Coalition on Domestic Violence, 20 people per minute are abused by a partner, which equates to 10 million people per year.¹⁹ Statistics show that one in three women and one in four men have been abused in their lifetime.²⁰ This rate of violence affects not only the adults, but also the children who are exposed to intimate partner violence each year.²¹ Furthermore, the presence of a handgun in the home increases the chance of a homicide by 500%.²² The statistics regarding rape and sexual abuse are no less alarming, showing that one in five women has been raped in their lifetime, nearly half of them by an acquaintance.²³ Despite this alarming regularity in physical threats to women, in 2012 and again in 2013 (each time a vote on the subject was taken), Senator Sessions voted against reauthorization of the "*Violence Against Women Act*," which protects women from domestic violence, dating violence, and sexual assault.²⁴ Combined with this consistent opposition to sensible gun control laws (discussed below), his opposition to increased protections for victims of domestic abuse, rape and sexual assault shows a lack of concern for the safety and welfare of women.

Furthermore, Senator Sessions opposed legislation to protect women's health care by voting against Title X funding, which supports contraception, breast cancer screening and other health services for low income women and by repeatedly voting to defund Planned Parenthood (in 2011 and 2015, every time there was a recorded vote), despite estimates that Planned Parenthood serves over five million clients a year, and that 75% of their clients have incomes at or below 150 percent of the federal poverty level. Services provided at locations include screening for breast,

¹⁹ National Coalition Against Domestic Violence, National Statistics, <http://ncadv.org/learn-more/statistics/national> (last accessed Jan. 9, 2017).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Ctrs. for Disease Control and Prevention, *Division of Violence Prevention Infographic*, available at, <https://www.cdc.gov/violenceprevention/nisvs/infographic.html> (Last accessed Jan. 9, 2017).

²⁴ See generally NAACP Legislative Rept. Card for the 112th Cong. (Issued in 2013), available at, <http://action.naacp.org/page/-/washington%20bureau/113Congress/ALABAMA2.pdf>

cervical and testicular cancers; contraceptives; pregnancy testing and pregnancy options counseling; testing and treatment for sexually transmitted diseases; comprehensive sexuality education, menopause treatments; and vasectomies and tubal ligations. For many of Planned Parenthood's patients, the annual exams received at their facilities are the only access to health care they have. Furthermore, since a prohibition on federal funding for abortions is already in place, there is no justification for this reckless initiative.

Lastly, Senator Sessions voted against the *Lilly Ledbetter Fair Pay Act*, which reinstates the original intent of Congress in the 1964 Civil Rights Act, by mandating that an individual may file a discrimination suit against an employer (or former employer) within 180 days of the end of his or her employment, thereby restoring the ability of victims of pay discrimination to obtain effective remedies. In short, the Lily Ledbetter Fair Pay Act seeks to ensure equal pay for equal work, and Senator Sessions's opposition to the Act is a troubling indication of his lack of commitment to combating employment discrimination against women.

4. Opposition to Sensible Gun Control

Every day in this country, 7 children die as a result of gun violence.²⁵ Gun violence is decimating many communities in our country, and is particularly damaging to African-American communities where 7,039 people were the victims of homicides in 2015, according to the FBI.²⁶ Despite the destruction created by easy access to guns, Senator Sessions has consistently (in 1999, 2004, 2005, 2009, 2010, 2013 and in 2015) (every time a vote on the subject was taken) opposed safe, sane and sensible measures to stem the unacceptable amount of gun violence in our communities and our nation. He has opposed expanding background checks to cover more gun purchasers, renewing the military style assault weapons ban, and increasing the

²⁵Brady Campaign to End Gun Violence, Key Gun Violence Stats., <http://www.bradycampaign.org/key-gun-violence-statistics> (last accessed Jan. 9, 2017).

²⁶Fed. Bureau of Invest., Expanded Homicide Table, 2015, *available at*, https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/expanded_homicide_data_table_1_murder_victims_by_race_ethnicity_and_sex_2015.xls. While this denotes all African American victims of homicide, the FBI also reports that 71.4% of all homicides were committed by a firearm.

penalty for straw purchasers and gun traffickers. Demonstrating his extreme views on the subject, in 2010 Senator Sessions supported an amendment on the floor of the U.S. Senate which, had it become law, would have allowed persons determined to be mentally incompetent by the U.S. Department of Veterans Affairs to nevertheless own firearms.²⁷ The fact that he would be responsible for interpreting and enforcing our nation's gun laws as Attorney General is simply frightening, as he cannot be trusted to recommend and support changes to our gun control laws when necessary to protect our children and our communities.

5. Criminal Justice and Policing Reform

One area that has required urgent attention by the Department of Justice over the past several years is policing reform. As the nation's attention has been gripped by repeated instances of questionable police shootings of unarmed citizens (often African Americans), the Department of Justice has been called upon to investigate individual shootings as well as to investigate department-wide policies and practices that might violate the civil rights of the communities that police departments are entrusted to protect. Indeed, before and since the 2014 shooting of Michael Brown in Ferguson, Missouri, many Americans have looked to the Department to bring much needed reforms to policing practices in small towns and big cities across the country. One highly effective tool repeatedly used by the Department of Justice to effect meaningful reform of policing practices is the consent decree. Through 25 investigations of police departments, resulting in 14 consent decrees over the past 7 years, the Department of Justice has, without resorting to time-consuming and expensive litigation, reached agreement with police departments on methods intended to minimize if not eliminate abusive policing practices, including unlawful police shootings.²⁸

²⁷ See NAACP Legislative Report Card of the 111th Congress, issued (Jan. 11, 2011), *available at*, http://action.naacp.org/page/-/action%20alerts/111th_report_card.pdf.

²⁸ See U.S. Dep't of Just. Press Release, *Justice Dep't Releases Report on Civil Rights Div. 's Pattern and Practice Police Reform Work* (Jan. 4, 2017), *available at*, <https://www.justice.gov/opa/pr/justice-department-releases-report-civil-rights-division-s-pattern-and-practice-police-reform>.

But under a Department of Justice led by Senator Sessions, it is unclear whether such progress toward more fair policing practices would continue. In a published research paper, Senator Sessions has called consent decrees “one of the most dangerous exercises of raw power” and stated that the use of consent decrees circumvents the democratic process.²⁹ Coupled with his opposition to the federal collection of data on police-involved shootings,³⁰ Senator Sessions’s opposition to the use of consent decrees gives the NAACP no confidence that progress toward more fair policing practices would continue were he to be confirmed as Attorney General of the United States.

In the area of criminal justice reform, the NAACP and several other groups were able to work cooperatively with Senator Sessions in an effort that culminated in the passage of the *Fair Sentencing Act of 2010*, which addressed racial disparities in federal cocaine sentencing provisions. We genuinely appreciate his efforts on that legislation; however, Senator Sessions’ agreement with our position on the crack – powder cocaine differential only went so far: Senator Sessions opposed retroactivity, in our opinion, a key element of the *Fair Sentencing Act*. Much of the thinking which went into the Omnibus Crime Bill of 1994 has proven not only to be erroneous, but also contributed to a massive racial disparity in our prison population; a racial disparity which can only be corrected by applying the Fair Sentencing Act retroactively to those who were sentenced under the original guidelines.

Sadly, the limited cooperation we did receive on the *Fair Sentencing Act of 2010* stands in stark contrast to other positions he has taken regarding criminal justice reform. In 1999, for example, he voted against requiring states to address the disproportionate confinement of minority juveniles.³¹ In 2012, he voted against the creation of a national commission charged with a thorough review of the fairness of

²⁹ Michael Debow, et. al., *Consent Decrees in Inst. Reform Litigation: Strategies for State Legis.*, Alabama Pol’y Insti. (2008), available at <http://www.alabamapolicy.org/wp-content/uploads/API-Research-Consent-Decrees.pdf>. (Forward by Sen. Jeff Sessions) (Last Accessed January 6, 2017).

³⁰ Tess Owen, *The Future of Policing*, Vice News (Dec. 5, 2016), available at <https://news.vice.com/story/what-trump-and-sessions-mean-for-police-reform>. (last accessed Jan. 6, 2017).

³¹ NAACP Leg. Rept. Card, 106th Cong. (Oct. 21, 2000), available at, <http://action.naacp.org/page/-/washington%20bureau/106thCongress.pdf>

our federal criminal justice system.³² As the prison population in our country continues to balloon, so does the cost to state and federal governments and taxpayers. Over the last 30 years, there has been a 500% increase in incarceration. Furthermore, although almost 60% of the people in prison or jail right now are racial or ethnic minorities, while we comprise just over 27% of the national population. For a variety of reasons, the cry for reform has been loud and is growing – from both the right and the left. Yet, Senator Sessions has used his position on the Senate Judiciary Committee to block attempts to enact any reform, apparently satisfied with the status quo. Senator Sessions has also opposed efforts at the Department of Justice to prioritize the enforcement of violent offenders over low-level drug offenses like marijuana possession,³³ while decrying President Obama’s use of his clemency powers to reduce the harsh sentences of non-violent drug offenders in federal prisons.³⁴

Senator Sessions has also consistently (in 2005 and in 2007) (every time a vote on the subject was taken) opposed increases in funding for the Department of Justice Community Oriented Policing Services, or “COPS” program. The COPS Office is responsible for advancing community policing nationwide and supporting the community policing activities of state, local, and tribal law enforcement agencies, and is one of the more successful initiatives in increasing the effectiveness of local police and improving relations between law enforcement and the communities they serve. To date, the COPS Office has invested more than \$14 billion in the advancement of community policing. The COPS Office currently manages over 2,000 active grants totaling \$1.4 billion.

Another area in which Senator Sessions appears out of touch is that of Civil Asset Forfeiture reform. Again, many of his colleagues from both chambers, both sides of the aisle, and all points on the political spectrum appear to agree that current laws

³² Amie Grawert, Brennan Center Analysis: Sen. Jeff Sessions’ Record on Crim. Just.

³³ James Higdon, Jeff Sessions’ Coming War on Legal Marijuana, POLITICO, Dec. 5, 2016, <http://www.politico.com/magazine/story/2016/12/jeff-sessions-coming-war-on-legal-marijuana-214501>.

³⁴ Jamie Lovegrove, *On Obama’s Aggressive Clemency Push, Sen. John Cornyn Splits with Criminal Justice Reform Advocates*, Dallas News (Dec. 20, 2016), available at , <http://www.dallasnews.com/news/politics/2016/12/20/amid-obamas-aggressive-clemency-push-sen-john-cornyn-splits-criminal-justice-reform-advocates> (quoting Sen. Sessions).

create a financial incentive in too many cases to for law enforcement to pursue profit over the fair administration of justice, facilitate the circumvention of state laws intended to protect citizens from abuse, encourage the violation of due process and property rights of Americans, and disproportionately impact people of color and those with modest means. Even the most benign of bills reforming the civil asset forfeiture laws gets held up much to the frustration of many.

6. Americans' Right to Privacy

Senator Sessions has shown a blatant disrespect for Americans' right to privacy. In 2016, the Email Privacy Act passed the House of Representatives by a unanimous vote. This legislation would have required a law enforcement agency to obtain a warrant prior to compelling tech firms such as Microsoft or Google to hand over the stored cell phone communications. During Senate Judiciary Committee consideration of the bill, Senator Sessions introduced an amendment which would have created a huge loophole and allowed law enforcement to demand the information even without a warrant.

7. Votes on Presidential Nominees

As Attorney General, one of Senator Sessions' responsibilities would be to advise the President on judicial nominations. This is particularly disturbing to the NAACP, as Senator Sessions has voted against the confirmations of Sonia Sotomayor, the first Latina nominated to serve on the U. S. Supreme Court,³⁵ as well as the first female Solicitor General, Elena Kagan, who was also subsequently nominated and confirmed to the U.S. Supreme Court.³⁶ He also voted against Judge Robert Wilkins, an African-

³⁵ Senate Roll Call Vote, Nomination of Sonia Sotomayor, 111th Cong. (2009), *available at*, http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=111&session=1&vote=00262.

³⁶ Senate Roll Call Vote, Nomination of Elena Kagan to become U.S. Solicitor Gen., 111th Cong. (2009), *available at* http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=111&session=1&vote=00107; Senate Roll Call Vote, Nomination of Elena Kagan to become Assoc. J. on the U. S. Sup. Ct.), 111th Cong. (2010), *available at* http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=111&session=2&vote=00229

American nominee to the D.C. Circuit Court of Appeals,³⁷ and twice voted against Ronnie White, an African-American nominee for the U.S. District Court for the Eastern District of Missouri.³⁸ All of these nominees were ultimately confirmed and now serve with distinction on the U.S. Supreme Court, federal courts of appeal, or federal district court. In contrast to these “no” votes, Senator Sessions voted to support the failed bid of Judge Charles Pickering, an alleged segregationist who was shown to have bullied the Department of Justice to support a more lenient sentence for a convicted cross burner, to the United States Court of Appeals for the Fifth Circuit.³⁹ His support for Judge Pickering demonstrates both a lack of judgment and a lack of respect for the career Department of Justice attorneys who were the object of Judge Pickering’s bullying.

Adding to this unfortunate record, Senator Sessions also opposed the nomination of Loretta Lynch to serve as the first female African American Attorney General in 2015, notwithstanding her longstanding service as a federal prosecutor in the United States Attorney’s Office for the Eastern District of New York. This record raises troubling questions regarding Senator Sessions’s views towards eminently well-qualified nominees who are women and/or racial minorities.

SENATOR SESSIONS’S WORDS SUPPORT HIS RECORD OF HOSTILITY TOWARDS CIVIL RIGHTS

While Senator Sessions’ voting record as a U.S. Senator is deeply concerning, his statements on issues of race, ethnicity, gender, religion and disability are equally troubling and signal deep-seeded attitudes on these subjects that are fundamentally inconsistent with service as Attorney General of the United States. Many of these statements came to light during the hearing on his failed nomination to serve as a judge on the U.S. District Court for the Southern District of Alabama in 1986. Some are more recent. Few, if any, are disputed by Senator Sessions.

³⁷ Senate Roll Call Vote, Nomination of Robert Wilkins to become J. of the D. C. Cir., 113th Cong. (2014), *available at*, http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=113&session=2&vote=00007

³⁸ Senate Roll Call Vote, Nomination of Ronnie White to become J. on the E.D.Mo., 113th Cong. (2014), *available at*, http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=113&session=2&vote=00227

³⁹ Senate Roll Call Vote, To invoke Cloture on the Nomination of Charles W. Pickering for J on the 5th Cir., *available at*, http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=108&session=1&vote=00419

One such statement was made by Senator Sessions in 2015 regarding the public display of the Confederate Battle Flag. Earlier that year, Dylan Roof, a white supremacist who was driven, in part, by a misplaced allegiance to the Confederate Battle Flag and what it represents to many in the South, murdered nine African-American churchgoers in Charleston, South Carolina, in hopes of starting a race war.

This senseless mass killing led many Americans of all political persuasions to engage in soul searching about the impact of public displays of the Confederate Battle Flag. When asked if he agreed with this change by many in their way of thinking, Senator Sessions said that calls to remove the Confederate Battle Flag from public buildings and other places of honor were among efforts by “the left” to “delegitimize the fabulous accomplishments of our country.”⁴⁰ As a U.S. Senator representing a state with an African-American population of 27 percent, Senator Sessions’s statement reflects an astonishing and appalling ignorance and/or callousness regarding what the Confederate Battle Flag represents to most African Americans. It cannot be explained away by politics.

Senator Sessions’ recent statements regarding Muslims are also deeply troubling and appear to reflect a lack of tolerance toward those of different faiths and a basic disregard for religious liberties. He has recently allied himself with anti-Muslim organizations, including the Center for Security Policy and the David Horowitz Freedom Center,⁴¹ while also defending and supporting the President-Elect’s call for a ban on Muslim immigration into the United States.⁴² Answering a question about a religion-based ban on *Meet The Press* last year, he brushed aside concerns that such a ban would plainly violate the First Amendment, stating “There is no constitutional

⁴⁰ Hunter, Sessions: Confederate Flag Critics Seem to Delegitimize Fabulous Accomplishments of Our Country, Daily Kos (Nov. 21, 2016 1:15 P.M.), <http://www.dailykos.com/story/2016/11/21/1602586/-Sessions-Confederate-flag-critics-seek-to-delegitimize-fabulous-accomplishments-of-our-country>

⁴¹ Southern Poverty Law Ctr., Jeff Sessions: Champion of Anti-Muslim and Anti-Immigrant Extremists (Nov. 18, 2016), available at, <https://www.splcenter.org/hatewatch/2016/11/18/jeff-sessions-champion-anti-muslim-and-anti-immigrant-extremists>

⁴² Statements of Sen. Jeff Sessions on Meet the Press Daily (July 15, 2016), available at, <http://mediamatters.org/video/2016/06/15/watch-chuck-todd-grill-sen-jeff-sessions-ten-minutes-about-his-support-trump-and-his-anti-islamic/210979>

right to come to America if you possess an ideology that is dangerous.”⁴³ Further underscoring his position, Senator Sessions was one of the few Senators who voted against a proposed amendment to existing legislation that would prevent a religious litmus test for people entering the country.⁴⁴ In a lengthy speech on the Senate Floor, Sen. Sessions attempted to put forth the unfounded argument, stating that “... so-called ‘immigrants’ rights’ must be supreme to the rights of sovereign nations to determine who can and cannot enter their borders.”⁴⁵ The Senator’s intentional conflation of Muslim theology and violent terrorism might work on the campaign trail, but is frightening to Muslims and unfitting for one who seeks to serve as the Attorney General of the United States.⁴⁶

More broadly, Senator Sessions has consistently opposed immigration reform and a path to citizenship for undocumented persons, even going so far as to question the long settled principle that persons born in this country are U.S. citizens.⁴⁷ He strongly opposed allowing undocumented immigrants to apply for temporary work authorization, and voted against the *Development, Relief, and Education for Alien Minors* (or DREAM Act), which would have provided a way for immigrants who came to the United States as children to earn their citizenship. In 2013, he also voted against the Senate’s bipartisan immigration reform bill that would have toughened border security while giving more protections to undocumented individuals already in the country. In fact, Senator Sessions voted against bi-partisan immigration reform in 2007, 2010, and 2013 and he called the 2007 bill “terrorist assistance.”

It was during the 1986 hearing on his failed nomination to serve as a judge of the U.S. District Court for the Southern District of Alabama that many of his troubling

⁴³ *Id.*

⁴⁴ Russell Berman, Senate to Vote on Donald Trump’s Religious Test, *The Atlantic* (Dec. 10, 2015), *available at* <http://www.theatlantic.com/politics/archive/2015/12/a-senate-test-vote-on-donald-trumps-religious-test/419997>

⁴⁵ Sen. Jeff Session Press Release, Sessions Delivers Remarks in Opposition to Global “Right to Migrate Amendment”, (Dec. 10, 2015), *available at*, <http://www.sessions.senate.gov/public/index.cfm/news-releases?ID=186AEDE2-B813-4741-A1B1-C3759DFDD2C5>

⁴⁶ *Id.*

⁴⁷ The Associated Press, Jeff Sessions among Republicans Criticizing 14th Amend.’s Birthright Provisions (Aug. 3, 2010 4:58PM), http://blog.al.com/wire/2010/08/jeff_sessions_among_republican.html. (quoting Jeff Sessions “I’m not sure exactly what the drafters of the (14th) amendment had in mind, but I doubt it was that somebody could fly in from Brazil and have a child and fly back home with that child, and that child is forever an American citizen”)

views and attitudes came to light. Thomas Figures, an African American Assistant U.S. Attorney, testified that Mr. Sessions said he thought the Ku Klux Klan was "OK until I found out they smoked pot." Senator Sessions later said that the comment was not serious, but did apologize for it.

Mr. Figures also testified that on one occasion, when the U.S. Department of Justice Civil Rights Division sent the office instructions to investigate a case that Mr. Sessions had tried to close, Figures and Sessions "had a very spirited discussion regarding how the Hodge case should then be handled; in the course of that argument, Mr. Sessions threw the file on a table, and remarked, 'I wish I could decline on all of them,'" by which Figures said Sessions meant civil rights cases generally. Figures also said that Sessions had called him "boy."⁴⁸ He also testified that "Mr. Sessions admonished me to 'be careful what you say to white folks.'" Senator Sessions responded to the testimony by denying the allegations, saying his remarks were taken out of context or meant in jest but not denying that they were made.

Lastly, the NAACP is especially concerned with Senator Sessions's vote against Senator John McCain's bipartisan amendment reaffirming the prohibition of torture.⁴⁹ Given that Senator Sessions could well be called upon to opine on whether certain practices constitute torture, his position regarding the McCain amendment indicates, at best, a troubling lack of conscience regarding how the United States treats prisoners of war.

SENATOR SESSIONS DISRESPECTS AND HOLDS DISDAIN FOR PROPONENTS OF CIVIL RIGHTS

Senator Sessions's disdain for proponents of civil rights is apparent from the public record. During his 1986 judicial nomination hearing, four Department of Justice lawyers who had worked with Senator Sessions – and who were doubtless familiar with the penalties for perjury – testified that he had made several racist

⁴⁸ See *Nomination of Jefferson B. Sessions, III to be U. S. Dist Ct Judge for the S. Dist of Ala: Hearings Before the Senate Comm. on the Judiciary*, at 497, 99th Cong. 1047 (1986) (statement of Thomas Figures, counsel, U.S. Dep't of Just).

⁴⁹ Conor Friedersdorf, *These 21 Republicans Voted Against a Torture Ban*, *The Atlantic* (Jun. 17, 2015), available at <http://www.theatlantic.com/politics/archive/2015/06/these-21-republicans-voted-against-a-torture-ban/396095/> (last accessed Jan. 9, 2016).

statements.⁵⁰ One of those lawyers, J. Gerald Hebert, testified that Sessions had also referred to the NAACP and the American Civil Liberties Union (ACLU) as "un-American" and "Communist-inspired" because they "forced civil rights down the throats of people."⁵¹ It was during the same confirmation hearing that Thomas Figures, an African-American Assistant U.S. Attorney, testified that Senator Sessions said that he believed the NAACP was an un-American organization teaching anti-American values.⁵² Finally, in response to a question during the hearing from then-Senator Biden on whether he had called the NAACP and other civil rights organizations "un-American," Sessions replied "I'm often loose with my tongue. I may have said something about the NAACP being un-American or Communist, but I meant no harm by it."⁵³ These very troubling statements by Senator Sessions, which he has never disavowed, evince a tendency on his part to demonize groups and persons with which he disagrees. We respectfully submit that these are not traits that the Attorney General of the United States should possess.

* * * * *

The Attorney General of the United States is charged with ensuring the fair, impartial and equal administration of Justice for all Americans. Senator Sessions's record is replete with examples of his disrespect for laws and programs and laws intended to protect all Americans, his disregard for the basic civil, human, and Constitutionally-guaranteed rights of all people, and his disdain for groups with which he may disagree. In light of his record, we submit that he is simply incapable of fulfilling the responsibilities inherent in the office of Attorney General of the United States.

It is for this reason that NAACP opposes the confirmation of Senator Sessions to serve as Attorney General of the United States. The NAACP calls on President-Elect Trump and all future Presidents to nominate individuals to serve as Attorney General who have a demonstrated commitment to the constitutional promises of civil rights, voting rights and civil liberties protection and enforcement for all, and an articulated

⁵⁰ See generally Sessions Nomination Hearing, at 518 (statement of Senator Joseph Biden).

⁵¹ *Id.* at 48 (statement of Senator Theodore Kennedy, quoting testimony from Mr. J. Gerald Hebert, attorney, U.S. Dept. of Just.).

⁵² *Id.* (statement of Jeff Sessions, nominee).

⁵³ *Id.* at 30 (statement of Jeff Sessions, nominee).

respect and promise to promote the civil and human rights of all people, regardless of their race, ethnicity, gender, age, religion, place of national origin, sexual preference or station in life.

Thank you again for the opportunity to testify before you on this important matter. I stand prepared to answer any questions.