



OFFICE OF GOVERNMENT
AND INTERNATIONAL AFFAIRS
1156 15th Street, NW
Washington, DC 20005
T 202.785.4200
F 202.785.4115
W ajc.org

The Hon. Chuck Grassley
The Hon. Dianne Feinstein
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

January 9, 2017

Dear Chairman Grassley and Ranking Member Feinstein,

We write on behalf of the American Jewish Committee (AJC), in connection with the upcoming hearings on the nomination of Senator Jeff Sessions to be the Attorney General of the United States. Founded in 1906, AJC has for more than a century been an active participant in many of the paramount legal and policy debates of the day, including the religious liberty and civil rights concerns with which the Justice Department regularly deals.

As a matter of long-standing policy, AJC, a strictly non-partisan organization, does not endorse or oppose the confirmation of particular nominees. However, as we have in the past, we urge the Senate Judiciary Committee to exercise its critically important constitutional duty under the “Advice and Consent” clause of the U.S. Constitution by closely examining the nominee’s record, including with respect to the following:

1. In light of the consistent finding in the FBI’s annual hate crimes reports that the numbers of hate incidents directed against Jews are higher than for any other religious community, what can and should the Department of Justice do to protect targeted religious communities from acts of intimidation, harassment and, in the worst instances, acts of violence? Given our nation’s strong protection of free speech, there will be cases of anti-Semitic or racist vitriol that should not and cannot give rise to legal prohibition and prosecution. In such cases, what is the role of the government in responding to, and rejecting, such noxious views?
2. Increasingly, it appears that terror attacks in urban areas—both here and in Europe—are the actions of so-called lone wolves. What more, if anything, should the Department of Justice be doing to detect and deter lone wolves? Relatedly, what is the role of the

government in tracking, and seeking to discourage, incitements to terrorism on social media—again taking into account the commitment to free speech noted above?

3. The Community Relations Service (CRS) of the Justice Department oversees a force of unheralded and highly-trained professional mediators, facilitators, trainers, and consultants who are charged with bringing together communities in conflict to help them enhance their ability to independently prevent and resolve existing and future concerns. In 2009, with the passage of the Matthew Shepard and the James Byrd, Jr. Hate Crimes Prevention Act, the mandate of CRS was expanded to include new jurisdictions that represent communities whose members have frequently been the victims of hate crimes, but were not protected under the 1964 Civil Rights Act. Will you support and facilitate CRS in the carrying out of this mission, both under its original mandate and as expanded in 2009?
4. In the wake of a series of incidents in which claims of racial disparity in law enforcement have been raised, the Civil Rights Division has conducted broad investigations of police departments (and indeed, entire criminal justice systems). Those investigations have in many instances identified systematic violations of the Constitution—notwithstanding that not all of these incidents culminated in prosecution, much less conviction, of law enforcement officials—and have led to broad reform of police practices, sometimes over the objections of local law enforcement authorities. Do you intend to allow the Civil Rights Division to continue to actively review police practices, in order to continue this trust-building work? Do you agree with critics who suggest that the repeated criticism of police departments has suppressed police willingness to aggressively root out crime?
5. The Civil Rights Division has done exemplary work in intervening in cases under the Religious Land Use and Institutionalized Persons Act (RLUIPA) where local authorities have worked to exclude mosques. In addition, the Justice Department has brought criminal charges against those who have attacked those institutions. Will the Department continue that work, which is so crucial to ensuring that Muslim Americans feel fully included in our society? Will the Department defend the Religious Freedom Restoration Act (RFRA) and RLUIPA against attacks from those who assert that they impermissibly favor religion? With respect to RFRA, what is your view on the assertion that the Supreme Court's decision in *Burwell v. Hobby Lobby* failed adequately to take into account the impact on third parties of the requested religious accommodation?
6. As the recent election shows, there are racial divides that split along partisan lines. How should the Department of Justice apply § 2 of the Voting Rights Act in these circumstances—both as to districting decisions and other ballot access issues (e.g., Michigan's recent unsuccessful attempt to eliminate one-lever straight party line voting; whatever its justification in terms of political science theory, this approach also seems to

substantially add to voting times in minority areas that tend to vote Democratic, and thereby discourages voters)? Do you think other provisions of the Voting Rights Act still allow for pre-clearance of changes in state and local voting practices, even after the Supreme Court invalidated the current trigger mechanisms—and are there legislative steps that should be taken, consistent with the Court’s decision, to restore fully effective pre-clearance?

7. To be sure, the Senate’s rejection of your nomination for a federal judgeship in 1986, which turned in large part on your characterization of civil rights advocacy and lawyers who defend constitutional rights, as “un-American,” took place a long time ago. However, in the years since, you have continued to dismiss lawyers who have spent their legal careers upholding the rule of law and championing core constitutional guarantees—such as freedom of speech and equal protection under the law—as “activists” with “agendas,” and as therefore categorically disqualified from serving as judges or in any other government role. Given this history, and given that it is a point of pride under the American legal system that even the most unpopular clients and the most unpopular causes are entitled to legal representation, what assurances can you provide that, under your leadership:
 - a) The Justice Department will, in fact, be a champion for civil rights?
 - b) Attorneys will not be deemed unfit by the Justice Department to hold office because they have represented clients and causes with which you happen to disagree?
 - c) Even when there is disagreement with particular challenges to government action, that the Justice Department will treat with respect attorneys and organizations, which, as a fundamental part of our system, challenge government actions and seek to vindicate individual rights?

By bringing these issues to the attention of the Senate, we hope to enhance the quality of the debate during the confirmation hearings of Senator Jeff Sessions.

We thank you for your consideration of our views.

Respectfully,



Richard T. Foltin
Director of National and Legislative Affairs



Marc D. Stern
General Counsel