My case against Jeff Sessions for AG

Last week's Senate Judiciary Committee hearings on Jeff Sessions powerfully demonstrated why he should not be confirmed for attorney general of the United States. Neither Sessions nor his supporters could point to a single thing that Sessions ever has done to advance the protection of civil rights for racial minorities, for women, or for gays and lesbians. His statements confirmed the concerns that caused over 1,400 law professors, including me, to sign a letter urging the Senate Judiciary Committee to reject his nomination.

Much of the confirmation hearings focused on whether Sessions is a racist. He said that the allegations against him were "incredibly painful" and others testified that they know Sessions and he is not a racist. But whether Jeff Sessions is a racist isn't the issue; it is his hostility to civil rights that makes him unsuited to be the head of the U.S. Department of Justice, which oversees enforcement of the nation's civil rights laws.

Throughout his career he has been a staunch opponent of protecting civil rights. In 1986, President Ronald Reagan nominated Sessions to be a federal district court judge in Alabama. The Senate rejected Sessions' confirmation, something that rarely occurs, because of his dismal record on race. Even a senator from his home state of Alabama, Howell Heflin, voted against Sessions. An assistant U.S. attorney who worked for Sessions, Thomas Figures, testified that he was repeatedly called "boy" by Sessions and was instructed by the Sessions to "be careful what you say to white folks," after Figures spoke assertively to a coworker. Sessions has said that the NAACP and the ACLU are "un-American" and "communist-inspired" for "trying to force civil rights down the throats of people."

As a U.S. attorney in Alabama, Sessions did nothing to enforce federal civil rights laws. As a senator, Sessions has had an abysmal record on civil rights. Sessions voted yes for a constitutional amendment to prohibit same-sex marriage, no on adding sexual orientation to the definition of hate crimes, no against reauthorizing the Violence Against Women Act, and no on the repeal of Don't Ask, Don't Tell.
Sessions was one of nine senators who voted against the bipartisan Detainee Treatment Act of 2005, which prohibits "cruel, inhuman, or degrading treatment or punishment" of any prisoner of the United States. How could we entrust upholding the rule of law, the core responsibility of the attorney general, to someone who sees no problem with subjecting prisoners to "cruel, inhuman, or degrading treatment"? In fact, Sessions has defended waterboarding, a practice long deemed to be torture under international law, saying that "it worked."

At his confirmation hearings, Sessions said that he would make a priority of enforcing the law against religious discrimination. Yet, in 2016, he referred to Islam as a "toxic ideology." What he likely means by "religious discrimination" is protecting the right of people to discriminate against gays and lesbians and same-sex couples based on their religious beliefs.

As attorney general, Sessions would oversee the enforcement of the Voting Rights Act, a law that he has decried as "intrusive." When the U.S. Supreme Court, in 2013, declared unconstitutional a key provision of the Voting Rights Act, Sessions called it "a good day for the South." At his confirmation hearings, Sessions' concern about voting was about fraud, which, as Sen. Al Franken pointed out, is often used as the justification for voter suppression. Sessions gave no indication that his Justice Department would aggressively enforce the Voting Rights Act to protect African-American and Latino voters.

Sessions' record on environmental issues also makes him unsuited to be attorney general. The Justice Department, through its Environment and Natural Resources Division, plays a key role in enforcing federal environmental laws. Here, too, Sessions has a terrible record. He repeatedly has called into question the relationship between fossil fuels and climate change. In a speech on the floor of the Senate in 2014, he said, "I don't know we know enough now to answer this question conclusively either way, but there's been a lot of exaggeration, there's been a lot of hype, and people are feeling the crunch already in their electric bills ... in our effort to stop storms that don't seem to be going down, or to stop temperatures that don't seem to be rising." Sessions voted to amend the Clean Air Act to eliminate the Environmental Protection Agency's authority to regulate greenhouse gases, but the bill failed in the Senate.

A president deserves some deference in selecting his cabinet. But the Constitution makes clear that the Senate must approve nominations. This is a key aspect of checks and balances and has been used in the past. For example, in 1989, the Senate rejected the nomination of John Tower to secretary of defense. In 1987, Ronald Reagan withdrew Robert Gates's nomination to be CIA director amid bipartisan opposition because of Gates' role in the Iran-Contra affair. In 2009, President Barack Obama withdrew the nomination of former Senate majority leader Tom Daschle to be Health and Human Services secretary after issues were raised about his unpaid taxes.
Unfortunately, Democrats on their own cannot block Sessions' confirmation. The Senate is 52–48 Republican and the filibuster no longer exists for cabinet appointments or lower federal court judgeships. To succeed in blocking Sessions, three Republicans will have to join the Democrats. Admittedly, it will be difficult to convince Republicans to stand up to their newly elected president and to deny confirmation to one of their own members. But I challenge anyone to find anything in Sen. Sessions record that shows that he will enforce civil rights laws or act to protect the environment. There should not be an attorney general who is hostile to these important areas of federal law.