

# Freedom from Religion *foundation*

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January 9, 2017

SENT VIA FACSIMILE TO:  
The Honorable Chuck Grassley  
(202) 224-6020

Re: Questions on Establishment Clause for attorney general nominee

Dear Chairman Grassley and Members of the Senate Committee on the Judiciary:

On behalf of the Freedom From Religion Foundation (FFRF), we are writing to thank you for your diligence in scrutinizing the nomination of Senator Jeff Sessions for the position of attorney general of the United States. FFRF is a nationwide nonprofit organization representing more than 25,000 members across the country, including members in every state. Our purposes are to protect the constitutional principle of separation between religion and government, and to educate the public about nonbelief.

We are very concerned about Senator Sessions' record and stated positions on a number of issues affecting the growing number of Americans, nearly a quarter of the population, who today identify as nonreligious.

We respectfully request that in order for the public and the Committee to gain a better understanding of Senator Sessions' position on the Establishment Clause, the following five questions be posed to him:

1. Senator Sessions, you have called the constitutional principle of a wall of separation between religion and government a "recent thing that is unhistorical and unconstitutional." Yet the Establishment Clause of the First Amendment expressly bars government from establishing religion. President Thomas Jefferson, when asked to explain the meaning of the Establishment Clause, noted in official correspondence in 1802 that it builds "a wall of separation between Church and State." Jefferson's helpful metaphor was first acknowledged by the Supreme Court in *Reynolds v. U.S* in 1878 and has been regularly invoked to explain the meaning of the Establishment Clause since the Court's 1947 *Everson* decision. In fact, the United States was first among nations to adopt a secular Constitution. As attorney general, would you uphold our nation's proud secular tradition of separating religion from government?
2. You have long been a vocal proponent of what you call "religious liberty." As you are aware, the United States is a pluralistic society, containing adherents of many different minority religions and more than 70 million citizens who practice no religion at all. Is it your belief that religious free exercise is limited to the

freedom to believe and worship as one chooses? Or do you propose that free exercise also includes the freedom to *act* as one's religion demands, even if such actions might curtail the civil rights of others, or run contrary to the law?

3. During a panel discussion at the Republican National Convention last July, in reference to Supreme Court Justice Sonia Sotomayor's comment that "there is no objective stance, but only a series of perspectives," you reportedly stated, "If you have secularization in the world and don't believe in a higher being, maybe you don't believe there is any truth." Roughly 23 percent of United States citizens, and about 35 percent of millennials, identify as nonreligious. With a record number of citizens choosing to practice no religion, it is critical that any U.S. attorney general be willing to protect the rights of all citizens—not just those in the Christian majority. Is it your contention that not believing in a god makes someone an undesirable citizen or categorically unfit to serve in public office or other positions of public trust?
4. In 2001, you admonished Senator Patrick Leahy, who then chaired the Judiciary Committee, for swearing in witnesses without directing them to recite the phrase "So help me God." You suggested in a statement that offering witnesses a secular affirmation in place of a religious oath was "another example of the secularization of American public life." The original text of our Constitution contains no fewer than three references to an "oath *or affirmation*." For instance, Article 2, Section 1 provides the complete text of the presidential "Oath or Affirmation," which does not include the phrase "so help me God" or call for placing a hand on a bible. As attorney general, will you defend the constitutional rights of Americans, including public officials, to choose to affirm, rather than swearing religious oaths?
5. As attorney general would you defend the law of the land even when it conflicts with your personal religious beliefs? Or do you believe that it is the role of the attorney general to reinterpret our country's laws from his or her own personal religious perspective?

Thank you for your service on the Senate Committee on the Judiciary and for ensuring that the position of United States attorney general is held by a candidate who recognizes and is willing to uphold our country's long-established constitutional principle of separating religion and government.

Very truly,



Dan Barker & Annie Laurie Gaylor  
Co-Presidents  
FREEDOM FROM RELIGION FOUNDATION