

Senator Dianne Feinstein
Remarks on Sessions Nomination
Senate Judiciary Committee
January 31, 2017

We have now had the opportunity to observe the first full week of the Trump administration. In that brief time, we've seen a flurry of executive orders and presidential declarations like none before—some broad, some seemingly unconstitutional, some unenforceable—and all deeply concerning in their intent and legality.

Specifically, the president has issued six executive orders and 10 presidential memoranda or directives in the first week of his administration for a total of 16 major administrative actions.

Among these, the president has issued a sweeping order to undermine the *Affordable Care Act*, prohibited funding to any international aid group for simply providing information to patients about abortion, suggested a 20 percent tax on exports from Mexico to pay for a border wall and most egregiously, issued multiple executive orders on immigration.

Not one order, idea or pronouncement was meant to bring this country together. They only serve to tear the country further apart.

It's in this context, with these events, that we are being asked to consider this nomination.

The president's nominee, a colleague of ours for some 20 years, is well known for his positions and point of view. He has been a staunch campaign partisan for the president.

He has reinforced and supported the Trump mission, style, rhetoric and views. He was the first senator to endorse. He has attended at least 45 Trump campaign events. He wore the hat. He was a leading voice. And, during the campaign, he spoke at large rallies, smiling, while crowds chanted, 'Lock her up.'

Then, in October of last year, at one of the presidential debates, and again at a rally in Virginia, candidate Trump repeatedly referenced him as 'my attorney general.'

It is very difficult to reconcile for me the independence and objectivity necessary for the position of attorney general with the partisanship this nominee has demonstrated.

In fact, as you referred to, Mr. Chairman, just yesterday, the *Washington Post* ran a story chronicling this nominee's involvement and connection to the president, his team and their first acts. The *Post* declared, the directives bore Trump's name, but another man's fingerprints: Jeff Sessions. The article continued, these are quotes:

During the transition, quote 'Sessions became a daily presence at Trump Tower in New York, mapping out the policy agenda and making personnel decisions,' end quote.

‘The author of many of Trump’s executive orders is senior policy advisor Stephen Miller, a Sessions confidant who was mentored by him and who spent the weekend overseeing the government’s implementation of the refugee ban. The tactician turning Trump’s agenda into law is deputy chief of staff Rick Dearborn, Sessions’ longtime chief of staff in the Senate. The mastermind behind Trump’s incendiary brand of populism is Stephen K. Bannon, who promoted Sessions for years as chairman of the Breitbart website,’ end quote.

The *Post* went on to report that Senator Sessions quote ‘lobbied for a ‘shock-and-awe’ period of executive action that would rattle Congress, impress Trump’s base and catch his critics unaware, according to two officials involved in the transition planning,’ end quote.

And finally, in a lengthy email for this story, Steve Bannon described Sessions as, and I quote, ‘the fiercest, most dedicated and most loyal promoter in Congress of Trump’s agenda,’ end quote. And said that Sessions, quote, ‘has played a critical role as the clearinghouse for policy and philosophy to undergird the implementation of that agenda,’ end quote.

Now if this is true, how could we possibly conclude that this nominee will be independent? I myself asked him that question and just got back the response and it was denied. But there are names cited. There’s the *Post* article to read. It seems to me it’s either true or false.

The executive order issued last Friday is a case in point. This executive order temporarily bans the entry of persons from seven Muslim-majority countries. It halts all refugee admissions. I believe this broad order goes against our core values. It disregards our obligations under international agreements, undermines critical protections in our Constitution, and it effectively bans one religion, the Muslim faith.

Already this weekend, we saw confusion and protests at airports across the country. Press reports have stated that between 100 and 200 people were detained at American airports and more than 300 people were not allowed to board planes to the United States from foreign airports, including my home state of California.

In addition, the order effectively bars entry of people ranging from Iraqi translators who helped American soldiers for years in Iraq to Syrian refugees fleeing horrible violence. It has also has been interpreted to apply to people with approved visas and dual nationals.

The question is, if confirmed, what will this nominee do? Will he support and defend these broad and destructive executive orders? Will he carry out and enforce the president’s actions that may very well violate the Constitution?

If past is prologue to the future, it’s not difficult to assess that he will.

Just one short year and two months ago, on December 7, 2015, then-candidate Donald Trump issued a press release ‘calling for a total and complete shutdown of Muslims entering the United States...’

Three days later, on December 10, 2015, Senator Leahy, the man sitting to my left, offered a resolution in the Judiciary Committee. And here's what it stated, quote: 'It is the sense of the Senate that the United States must not bar individuals from entering into the United States based on their religion, as such action would be contrary to the fundamental principles on which this nation was founded,' end quote.

The vote was 16-4 in favor of the Leahy resolution. The chairman and a majority of Republicans, gentlemen, voted for it.

But the nominee voted 'no.' In fact he spoke for nearly 30 minutes against it. He had to know this type of ban would raise serious constitutional questions. He had to know it was effectively unenforceable. But he supported it anyway.

This 'no' vote speaks volumes. But it was certainly not the last word.

According to the *Washington Post* and again I quote, 'From immigration and health care to national security and trade, Sessions is the intellectual godfather of the president's policies. Sessions' reach extends throughout the White House, with his aides and allies accelerating the president's most dramatic moves, including the ban on refugees and citizens from seven mostly-Muslim nations that has triggered fear around the globe.'

Now if it were just this one article by the *Post*, just one campaign event, just one vote, maybe there would be an open question. But there are many disturbing actions and statements throughout his record.

Let me name some of them. I'm also concerned about the president's repeated calls for an investigation into voter fraud simply because he lost the popular vote by 3 million.

And again, last week, the White House press secretary reiterated the president's belief that there was widespread voter fraud in this past election and that millions of illegal votes were cast—with no evidence whatsoever.

What will this attorney general nominee do?

Will he use the awesome power of the Department of Justice and spend taxpayer dollars to launch partisan investigations into voter fraud? Or will he use his position to defend the voting rights of millions of Americans?

When asked about voter fraud by Senator Franken, Senator Sessions responded that he believes, and I quote 'we regularly have fraudulent activities occur during election cycles,' end quote.

In reality, claims of widespread voter fraud have been repeatedly debunked and even isolated cases have been found to be extremely rare. This past December, the *Washington Post* reviewed the 2016 election and out of over 135 million people voting, they found four documented cases of voter fraud.

If confirmed, what will Senator Sessions do when faced with questions on reproductive rights? This is an issue of real importance to a dominant majority of women in this country.

At his hearing, I asked directly if it is still his view that *Roe v. Wade* is quote ‘one of the worst, colossally erroneous Supreme Court decisions of all time?’ end quote. He said, quote ‘It is,’ end quote.

He said he will, quote, ‘respect,’ end quote, *Roe v. Wade*, but believes the decision, quote, ‘violated the Constitution,’ end quote.

An attorney general who says he believes a woman’s well-established fundamental rights are unconstitutional is essentially inviting states to pass more restrictions to women’s access to health care, knowing full well the Justice Department may in fact support those in court.

In fact, I asked whether the Justice Department under his leadership would seek to overturn *Roe* or change precedent on reproductive rights. He left the door open by saying, and I quote, ‘Such decisions would depend upon the unique circumstances of the case or cases as they arise. I will not pre-judge the issues,’ end quote.

And, when asked by Senator Blumenthal whether he believes a woman should be punished for having an abortion—as the president said during the campaign—Senator Sessions could have given a simple ‘no’ answer.

But he did not. He refused to rule out punishment for women. Instead, he merely noted that while the Supreme Court had upheld the right to an abortion, that right had been limited by various state and federal statutes, quote, ‘many of which have been upheld as constitutional,’ end quote, and noted that his role as attorney general would be to faithfully enforce all laws.

He clearly left open the possibility that he would enforce laws that punish women.

The final issue I’d like to touch on, Mr. Chairman, is civil liberties.

Ever since 9/11, we’ve had an intense struggle between civil liberties and national security.

I think people know I believe in strong national security. But I also believe we must never sacrifice our values or fundamental constitutional rights as Americans.

It’s clear from the record that the nominee believes otherwise.

Senator Sessions was one of only nine senators in 2005 to vote against the *Detainee Treatment Act*, which contained Senator McCain’s and my bipartisan amendment that prohibited ‘cruel, inhumane and degrading’ punishment for individuals in American custody.

In 2008, on the Senate floor, he praised a prior attorney general for refusing to rule out the use of waterboarding in the future and claimed that enhanced interrogation techniques were necessary to stop additional terrorist plots.

Specifically he stated, and I quote, 'I am glad [Attorney General Mukasey] is able to say waterboarding was utilized only three times and that it had not been used in five years. But I am glad he also said he would not say it would never be done again.'

That's not true. In fact, one detainee alone was subjected to waterboarding 183 times. And as the Senate Intelligence Committee's extensive study on the CIA's interrogation program revealed, these so-called 'enhanced interrogation techniques,' particularly waterboarding, were and are ineffective and did not produce actionable intelligence.

And, in the summer of 2016, the nominee was one of 21 senators to vote against prohibiting waterboarding and other techniques not found in the Army Field Manual.

He has even expressed support for the detention of Americans, captured on American soil, to be held without charge or trial.

These positions give me no confidence the nominee will uphold our laws and civil liberties as attorney general.

Mr. Chairman, today we are being asked to vote on the one person who will lead the Department of Justice and its 113,000 employees charged with '[defending] the interests of the United States according to our nation's laws' and '[ensuring] fair and impartial administration of justice for all Americans.'

We are being asked to vote on a nominee that will have to stand up to a president who is clearly willing to ignore the law and even issue orders in violation of the Constitution.

We are being asked to determine whether this nominee's record demonstrates that he will have the objectivity to enforce the law for all Americans and be an independent attorney general and not an arm of the White House.

Yesterday, early in the evening, we clearly saw what a truly independent attorney general does.

Sally Yates, the acting attorney general who enjoyed broad bipartisan support when she was confirmed as deputy attorney general, declared that under her leadership the department could not defend Trump's executive order on immigrants and refugees.

Here's what she wrote and it's important, and I quote 'My responsibility is to ensure that the position of the Department of Justice is not only legally defensible, but is informed by our best view of what the law is after consideration of all the facts. In addition, I am responsible for ensuring that the positions we take in court remain consistent with this institution's solemn obligation to always seek justice and stand for what is right.'

‘At present, I am not convinced that the defense of the executive order is consistent with these responsibilities nor am I convinced that the executive order is lawful. Consequently, for as long as I am the acting attorney general, the Department of Justice will not present arguments in defense of the executive order, unless and until I become convinced that it is appropriate to do so.’

Members, that statement took guts. That statement said what an independent attorney general should do. That statement took a steel spine to stand up and say no. It took the courage of Elliot Richardson and William Ruckelshaus who stood up to President Nixon.

That is what an attorney general must be willing and able to do.

I have no confidence that Senator Sessions will do that.

Instead, he has been ‘the fiercest, most dedicated, and most loyal promoter in Congress of the Trump agenda, and has played a critical role as the clearinghouse for policy and philosophy to undergird the implementation of that agenda.’

With this in mind, I must vote no. Thank you.