

# REPORT

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PROJECT ON GOVERNMENT OVERSIGHT

## **At Least One-Third of Attorney General Nominee's Top Donors Have Matters Involving the Department of Justice**

January 9, 2017

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For more than 20 years, Senator Jeff Sessions (R-AL), President-elect Donald Trump's nominee to be Attorney General of the United States, has actively sought and accepted campaign contributions from many of the very companies he will be called upon to investigate or prosecute should he be confirmed. At the very least, his fundraising suggests relationships that are in tension with the impartial administration of justice.

In the last decade, Senator Sessions' campaign committee and leadership PAC have accepted more than \$6.3 million from corporations, trade associations, lobbying or law firms, PACs, and their employees. There were two hundred and eighty-six entities whose cumulative contribution equaled or exceeded \$5,000 each.<sup>1</sup>

Fundraising of this nature is standard for elected officials. However, it becomes a matter of concern when an elected official moves into a new role where his or her relationships with past donors could suggest the appearance of bias or partiality.

Of the 286 top donors, fully one-third (97) have current, known matters involving the Department of Justice. Fifty-six have a lawsuit, active consent decree/settlement, or public investigation pending before DOJ; a further 20 are large lobbying firms that tout their access to and ability to lobby DOJ; another 12 are major trade associations that represent members who are being sued or investigated by DOJ; and 9 are companies that are government contractors with current or recent contracts with DOJ.<sup>2</sup> (Appendix A)

If confirmed, Senator Sessions would be only the fourth politician in the last fifty years who conducted recent fundraising activity before becoming Attorney General.<sup>3</sup> In order to assure the

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<sup>1</sup> Our data was obtained from the Center for Responsive Politics, which provided us with a tally of contributions to Senator Sessions' campaign committee and leadership PAC (Tallatchee Creek Inc.) from corporate or organizational PACs, other PACs, and employees of the corporation or organization. The data covered a 10-year period up to the most recent 2016 Federal Election Commission filing deadline. Senator Sessions, who was first elected to the Senate in 1996, was up for reelection to his seat twice during that 10-year period: in 2008 and 2014. In total, more than 2,300 entities (in combination with or solely by their employees) contributed more than \$6.3 million to Senator Sessions. The 286 donors accounted for \$4 million of those contributions.

<sup>2</sup> A team of lawyers, law students, and investigators researched each of the entities on the list to determine whether it had a case, investigation, or matter before DOJ. We were assisted in this research by the American Constitution Society, the law firm Lieff Cabraser Heimann & Bernstein, LLP, David Melton, Dana Pownall, Conor Tucker, and others. They searched publicly available material, including press releases by the entity or DOJ, Securities and Exchange Commission filings by the entity, public records, and press reports. Since the majority of pending DOJ investigations are not publicly disclosed, this analysis is likely underinclusive. By the same token, some investigations that were publicly reported may have been closed without public notice. Accordingly, the count of companies under investigation should not be taken as definitive.

<sup>3</sup> Twenty-three men and women have served as Attorneys General since 1967. Seven of them were acting Attorneys General (two of whom—Eric Holder and Richard Thornburgh—also served as Senate-confirmed Attorneys General at a different time). All but three of them, four if Senator Sessions is included, came either from private or government practice.

- In 2001, Senator John Ashcroft was nominated to be Attorney General by President George W. Bush. Senator Ashcroft had run for and lost his Missouri Senate seat in 2000. (Ashcroft was succeeded as Attorney General by Alberto Gonzales, who came to the post from his position as White House Counsel. Prior to becoming White House Counsel, Gonzales had been a Justice on the Texas Supreme Court, which is an elective office. He had accepted campaign contributions in running for that seat, but four years had lapsed since he had last been in position to seek money from donors.)
- In 1988, President Ronald Reagan appointed former Pennsylvania Governor Richard Thornburgh to the post. More than a year and a half had passed since Thornburgh had been in political office.
- In 1974, President Richard Nixon appointed Ohio Senator William Saxbe to be Attorney General. Saxbe was appointed in the wake of the Saturday Night Massacre.

public that the potential conflicts raised by the donations are being taken seriously, Senator Sessions should commit to a process for evaluating his campaign finance record and any resulting ethical issues in advance of taking his oath of office. He should agree to a bright-line recusal rule and to following clear ethical standards that will avoid even the appearance of a conflict of interest with previous financial supporters.

## The Record

An analysis of Senator Sessions' campaign contributions raises several matters that pose conflict-of-interest and ethical concerns if he assumes the post of Attorney General. They include the following examples.

### *Southern Company and Balch & Bingham LLP*

Over the past ten years, Senator Sessions' two biggest donors have been energy utility Southern Company (\$142,015) and the law firm Balch & Bingham LLP (\$93,800).

Southern Company is the nation's second largest utility company, with more than 9 million customers who are largely concentrated in the South. It had almost \$15 billion in operating revenues in 2015. Its headquarters are in Atlanta, GA, but it also has a substantial executive presence in Alabama. Balch & Bingham is an Alabama-based law firm with more than 200 lawyers. It also has an office in Washington, DC, and recorded more than \$1.1 million in lobbying income in 2016 alone.<sup>4</sup>

Several of Southern Company's subsidiaries have recent and ongoing settlement agreements with the government, and one subsidiary is being investigated by the Securities and Exchange Commission. In June 2015, Southern subsidiary Alabama Power reached a settlement with the EPA and the Department of Justice in a Clean Air Act case that stretches back to 1999. The settlement requires ongoing oversight.<sup>5</sup> In another case, DOJ reached a \$29 million settlement with two companies in July 2016, including Southern subsidiary Georgia Power, for the clean-up of a Superfund site, with violations and remediation efforts dating back to 1994.<sup>6</sup> The clean-up process will take time and requires oversight. The EPA expects to take future actions to address other parts of the contaminated area as well. DOJ is expected to be involved in the ongoing oversight in both matters.<sup>7</sup>

What makes this especially noteworthy, besides the large sums of money involved, is the fact that No. 1 donor Southern Company has retained No. 2 donor Balch & Bingham to lobby on its

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We chose 50 years as a convenient cut off point and since the modern mass media and political fundraising era began roughly in that time period. In any event, from World War II to 1967, there were seven Attorneys General, only one of whom came to office from an elective position.

<sup>4</sup> OpenSecrets.org, "Balch & Bingham," last modified October 18, 2016, accessed January 5, 2017.

<https://www.opensecrets.org/lobby/firmsum.php?id=D000021862&year=2016> (Hereinafter "Balch & Bingham")

<sup>5</sup> Dennis Pillion, "Alabama Power agrees to shutter 3 coal-fired units, convert 4 others to natural gas in EPA deal," Al.com, June 25, 2015.

[http://www.al.com/news/index.ssf/2015/06/epa\\_alabama\\_power\\_agree\\_to\\_set.html](http://www.al.com/news/index.ssf/2015/06/epa_alabama_power_agree_to_set.html)

<sup>6</sup> Department of Justice, "Department of Justice and EPA Announce \$29 Million Settlement for Cleanup Work at Coastal Georgia Superfund Site," July 29, 2016.

<https://www.justice.gov/opa/pr/departments-justice-and-epa-announce-29-million-settlement-cleanup-work-coastal-georgia> (Hereinafter DOJ: \$29 Million Settlement)

<sup>7</sup> DOJ: \$29 Million Settlement

behalf. It is the law firm's largest lobbying client, paying twice as much in 2016 (\$240,000) as the firm's next largest lobbying client.<sup>8</sup> The \$240,000 paid for the lobbying services of Jeffrey Wood—who is a former staffer for Senator Sessions, and whose sole lobbying client is Southern Company and its Alabama subsidiary. Wood was also reportedly an advisor to the Trump campaign on energy matters prior to the election.<sup>9</sup> Another former Sessions staffer, Michael J. Davis, works for Balch & Bingham as a lobbyist for Southern Company, as well. (Balch & Bingham and Davis also lobby on behalf of HealthSouth Corp.,<sup>10</sup> a recent donor currently being investigated by the DOJ.<sup>11</sup>) Finally two other former staffers for Senator Sessions, Jack Bonnikson and Leroy D. Nix, are employed by Southern Company. Bonnikson is now the communications manager for Southern Company's Mississippi subsidiary and Nix is a lobbyist for the company.<sup>12</sup> Balch & Bingham also represents Southern Company in court. These personal ties to Senator Sessions, while legal, present situations where potential conflicts of interest, including bias or special access, could arise should Senator Sessions be confirmed as Attorney General.

### *Antitrust Matters*

In total, we found 12 donors in the top 286 that have a pending antitrust or competition matter before the Department of Justice, and another donor is before the Supreme Court in a case where DOJ has filed an *amicus* brief.

- AT&T (\$54,500): AT&T's proposed merger with Time Warner is currently under review by DOJ. (Also AT&T's fully owned subsidiary DirecTV is the subject of an antitrust lawsuit brought by DOJ; see below for more).<sup>13</sup>
- Blue Cross/Blue Shield (\$44,000): DOJ is currently suing to block the merger of Cigna and Anthem, the largest for-profit health insurance company in Blue Cross Blue Shield.<sup>14</sup>
- Comcast (\$27,700): According to *The Wall Street Journal*, DOJ issued a civil investigative demand to Comcast looking into "whether Comcast Corp.'s business practices in the \$5 billion cable advertising-sales market violate federal antitrust law, according to a document reviewed by [the newspaper]."<sup>15</sup>
- WPP (\$25,250): In December 2016, WPP confirmed that two of its subsidiaries had been subpoenaed by DOJ in connection with an "ongoing [antitrust] investigation of

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<sup>8</sup> "Balch & Bingham"

<sup>9</sup> Andrew Restuccia and Elana Schor, "Trump campaign taps GOP energy lobbyist as adviser," *Politico*, September 12, 2016. <http://www.politico.com/story/2016/09/trump-campaign-taps-gop-energy-lobbyist-as-adviser-228059>

<sup>10</sup> "Balch & Bingham"

<sup>11</sup> HealthSouth Corporation, "Quarterly Report for the Period Ending September 30, 2016," filed October 28, 2016. <http://investor.healthsouth.com/financial-information/sec-filings/2016/default.aspx>

<sup>12</sup> "Balch & Bingham"

<sup>13</sup> AT&T, "AT&T to Acquire Time Warner," October 22, 2016.

[http://about.att.com/story/att\\_to\\_acquire\\_time\\_warner.html](http://about.att.com/story/att_to_acquire_time_warner.html)

<sup>14</sup> Department of Justice, "Justice Department and State Attorneys General Sue to Block Anthem's Acquisition of Cigna, Aetna's Acquisition of Humana," July 21, 2016. <https://www.justice.gov/opa/pr/justice-department-and-state-attorneys-general-sue-block-anthem-s-acquisition-cigna-aetna-s>

<sup>15</sup> Shalini Ramachandran and Brent Kendall, "Justice Department Probing Comcast's Role in 'Spot' Cable Ad Sales Market," *The Wall Street Journal*, November 24, 2015. <http://www.wsj.com/articles/justice-department-probing-comcasts-role-in-spot-cable-ad-sales-market-1448387515>

video production and post-production practices in the advertising industry. WPP and its subsidiaries are fully cooperating with the enquiries.”<sup>16</sup>

- DirecTV (\$24,000): In November 2016, DOJ “sued DIRECTV and its corporate successor, AT&T Inc., for acting as the ringleader of a series of unlawful information exchanges between DIRECTV and three of its competitors – Cox Communications Inc., Charter Communications Inc. and AT&T – during the companies’ negotiations to carry SportsNet LA, which holds the exclusive rights to telecast almost all live Dodgers games in the Los Angeles area.”<sup>17</sup> (See also above AT&T matter before DOJ)
- Amgen (\$19,500): In December 2016 the Solicitor General filed an *amicus* brief with the Supreme Court relating to Amgen’s ongoing lawsuit against Sandoz and dealing with competition in the biologics market.<sup>18</sup>
- National Association of Realtors (\$19,250): In 2008, DOJ entered into a settlement with the Association that runs through 2018 requiring the NAR to repeal “policies challenged by the United States and replace those policies with rules that do not discriminate against innovative brokers who use the Internet to provide high-quality, low-priced brokerage services to consumers.”<sup>19</sup>
- Citigroup (\$13,000): Citigroup is involved in a long-running DOJ investigation into manipulation of foreign currency markets. According to a December 2016 Bloomberg report: “The three banks [including Citigroup] have cooperated to provide evidence of a potential new antitrust conspiracy in the currency spot market that prosecutors say involves different currencies than the ones at the center of their 2015 guilty pleas.”<sup>20</sup>
- Clear Channel/iHeartRadio (\$10,500): On December 22, 2016, the Justice Department announced that it “will require Clear Channel Outdoor Holdings, Inc. and Fairway Media Group, LLC to divest billboards in Atlanta and Indianapolis in order to proceed with their \$150 million swap of outdoor advertising assets located in multiple U.S. markets.”<sup>21</sup> The proposed settlement is still pending before a court.

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<sup>16</sup> E.J. Schultz, “WPP Confirms Three Subsidiaries Subpoenaed in DOJ Probe,” *AdvertisingAge*, December 19, 2016. <http://adage.com/article/agency-news/wpp-confirms-subsidiaries-subpoenaed-doj-probe/307212/>

<sup>17</sup> Department of Justice, “Justice Department Sues DIRECTV for Orchestrating Information Sharing Agreements with Three Competitors,” November 2, 2016.

<https://www.justice.gov/opa/pr/justice-department-sues-directv-orchestrating-information-sharing-agreements-three>

<sup>18</sup> Jeff Overley, “High Court Seeks US Take On Sandoz-Amgen Biosimilar Battle,” *Law360.com*, June 20, 2016.

<https://www.law360.com/articles/808627/high-court-seeks-us-take-on-sandoz-amgen-biosimilar-battle>

See also “Amgen Inc. v. Sandoz Inc.,” SCOTUSblog.com. <http://www.scotusblog.com/case-files/cases/amgen-inc-v-sandoz-inc/>

<sup>19</sup> Department of Justice, “Enforcing Antitrust Laws in the Real Estate Industry,” last modified July 2, 2015, accessed January 5, 2016. <https://www.justice.gov/atr/enforcing-antitrust-laws-real-estate-industry>.

<sup>20</sup> Tom Schoenberg and David McLaughlin, “Barclays, JPMorgan, Citi Help U.S. Broaden Currency Probe,” *Bloomberg*, December 12, 2016. <https://www.bloomberg.com/news/articles/2016-12-12/barclays-jpmorgan-citigroup-help-u-s-broaden-currency-probe>

<sup>21</sup> Justice Department, “Clear Channel Outdoor and Fairway Media Group Required to Divest Billboards in Order to Complete Asset Swap Transaction,” December 22, 2016. <https://www.justice.gov/opa/pr/clear-channel-outdoor-and-fairway-media-group-required-divest-billboards-order-complete-asset>

- American Express (\$6,000): American Express is involved in ongoing litigation regarding its practices barring merchants from steering their customers to other credit cards with lower transaction fees.<sup>22</sup>
- Endo Health Solutions (\$6,000): In November 2016, Bloomberg reported that DOJ's Antitrust Division was conducting a criminal price collusion investigation amongst generic pharmaceutical companies.<sup>23</sup> (Other companies reportedly involved in the probe have also donated to Senator Sessions: Mylan (\$1,000) and Teva (\$1,000)).
- DuPont (\$5,000): DuPont's proposed merger with Dow Chemical is currently pending before DOJ. (Dow Chemical also donated \$1,000.)
- EnergySolutions (\$5,000): On November 16, 2016, DOJ filed suit to block EnergySolutions' acquisition of Waste Control Specialists.<sup>24</sup>

### *False Claims Act Cases*

False Claims Act cases are the government's best tool for fighting fraud: they resulted in over \$4.7 billion in recoveries in FY 2016 alone. Many of these cases are initiated by whistleblowers (*qui tam* lawsuits), which consistently comprise the majority of recoveries each year.<sup>25</sup>

Once a whistleblower has filed under the False Claims Act, the DOJ can subsequently intervene and take up the prosecution of that case at any time.<sup>26</sup> The decision whether to intervene in a case can have significant ramifications on whether the case can ever be analyzed or tried since whistleblowers who must proceed without DOJ support often lack the resources or ability to sustain a prolonged legal battle against large corporate opponents. That decision is largely left to the discretion of the DOJ, giving it significant leeway to decline cases for a multitude of reasons, even if the case has merit.

False Claims Act cases are placed under seal when they are filed, and it is not uncommon for that seal to remain in place for years. The fact that they are hidden from the public means that there may be many possible matters involving Senator Sessions' donors and DOJ that we do not know about. Given that the DOJ has significant discretion when it comes to intervening in cases—or not—it is important that there be clear policies the Attorney General and other DOJ appointees will follow even without public oversight, and that any incoming DOJ appointee clearly articulates how he or she plans to maintain objectivity and avoid any appearance of impropriety.

<sup>22</sup> Justice Department, "U.S. and Plaintiff States v. American Express Co., et al.," last modified November 10, 2016, accessed January 5, 2017. <https://www.justice.gov/atr/case/us-and-plaintiff-states-v-american-express-co-et-al>

<sup>23</sup> David McLaughlin and Caroline Chen, "U.S. Charged in Generic Drug-Probe to Be Filed by Year-End," Bloomberg, November 2, 2016. <https://www.bloomberg.com/news/articles/2016-11-03/u-s-charges-in-generic-drug-probe-said-to-be-filed-by-year-end>

<sup>24</sup> Department of Justice, "Justice Department Sues to Block EnergySolutions' Acquisition of Waste Control Specialists," November 16, 2016. <https://www.justice.gov/opa/pr/justice-department-sues-block-energysolutions-acquisition-waste-control-specialists>

<sup>25</sup> Department of Justice, "Justice Department Recovers Over \$4.7 Billion From False Claims Act Cases in Fiscal Year 2016," December 14, 2016. <https://www.justice.gov/opa/pr/justice-department-recovers-over-47-billion-false-claims-act-cases-fiscal-year-2016>

<sup>26</sup> The Bauman & Rasor Group, "If the government declines to intervene," accessed January 5, 2017. <http://www.quitam.com/for-whistleblowers/if-the-government-declines-to-intervene/>



We found 18 unsealed cases where donor companies were involved in ongoing or recently settled False Claims Act cases and where the DOJ might intervene (or not). In another 13, DOJ has intervened.<sup>27</sup>

Some of the cases we found in which DOJ has already intervened or still may intervene involve companies that have donated to Senator Sessions.

- Lockheed Martin (\$89,150): The DOJ has intervened in a *qui tam* suit against Lockheed Martin's subsidiary Sikorsky for an illegal 32 percent markup on products sold to the government.<sup>28</sup>
- BAE Systems (\$24,500): BAE Systems has two ongoing False Claims Act cases. One was filed by the DOJ and alleges that BAE overbilled the Army on a truck contract. The other was initiated in 2009 by two whistleblowers over timesheet fraud and bid-rigging. The DOJ has not intervened in that case, but could.<sup>29</sup>
- American Hospital Association (\$17,200): The DOJ recently intervened in a case against AHA member Prime Healthcare, which has been accused of defrauding Medicare by improperly admitting patients to hospitals from Emergency Rooms.<sup>30</sup>
- CVS/Caremark (\$15,000): In October 2016, CVS subsidiary Omnicare agreed to pay \$28 million to settle a False Claims Act case regarding kickbacks from a drug manufacturer. The case was filed by a whistleblower, and the DOJ chose to intervene in 2014. Other aspects of the settlement may require ongoing verification and oversight by the DOJ in the coming months or years.<sup>31</sup>
- Solvay SA (\$5,000): Two whistleblowers filed a False Claims Act case accusing Solvay of Medicaid fraud. The case was recently decided, but it is widely expected to be appealed. Solvay is being accused of marketing medications for uses other than those approved by the FDA.<sup>32</sup> DOJ has not intervened in this case, but could.

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<sup>27</sup> We only counted pending cases the Department of Justice was actively involved in when we concluded that one-third of the donors analyzed had matters before the Department of Justice.

<sup>28</sup> Complaint, *United States of America ex rel. Mary Patzer v. Sikorsky Aircraft Corporation* (E.D. Wisc 2014) (No. 11-C-560). <http://www.taf.org/Filed%20Complaint%20Sikosky.pdf>

<sup>29</sup> Koryn M. McHone, "The Devil's in the Details: Make Sure your Agreements Mirror Your Intentions," *National Law Review*, May 29, 2014. <http://www.natlawreview.com/article/devil-s-details-make-sure-your-agreements-mirror-your-intentions>; See also Department of Justice, "United States Files Suit against Texas Subsidiary of BAE Systems Alleging False Claims under Army Contract for Trucks," June 19, 2015. <https://www.justice.gov/opa/pr/united-states-files-suit-against-texas-subsidiary-bae-systems-alleging-false-claims-under>

<sup>30</sup> Department of Justice, "United States Intervenes in False Claims Act Lawsuit Against Prime Healthcare Services Inc. and its CEO Alleging Unnecessary Inpatient Admissions from Emergency Rooms," May 25, 2016. <https://www.justice.gov/opa/pr/united-states-intervenes-false-claims-act-lawsuit-against-prime-healthcare-services-inc-and>

<sup>31</sup> Department of Justice, "Nation's Largest Nursing Home Pharmacy to Pay Over \$28 Million to Settle Kickback Allegations," October 17, 2016. <https://www.justice.gov/opa/pr/nation-s-largest-nursing-home-pharmacy-pay-over-28-million-settle-kickback-allegations>

<sup>32</sup> Dana A. Elfin, "Hospira Fails to Get Helsinn Aloxii Suit Dismissed; Court Finds Jurisdiction Exists," *Bloomberg BNA Pharmaceutical Law & Industry Report*, April 8, 2016, p. 506. [http://www.skpf.com/uploads/1455/doc/Hospira\\_Fails\\_to\\_Get\\_Helsinn\\_Aloxii\\_Suit\\_Dismissed\\_Court\\_Finds\\_Jurisdiction\\_Exists\\_\(Ainsworth\)\\_April\\_2016.pdf](http://www.skpf.com/uploads/1455/doc/Hospira_Fails_to_Get_Helsinn_Aloxii_Suit_Dismissed_Court_Finds_Jurisdiction_Exists_(Ainsworth)_April_2016.pdf)



## How Other Attorneys General Have Dealt with Similar Conflicts

The Department of Justice is the world's largest law firm: it has more than 10,000 lawyers. The office of the Attorney General oversees DOJ, its more than 110,000 employees, and its budget in excess of \$27 billion. There are more than 40 separate component organizations within DOJ, including the Federal Bureau of Investigation (which alone has 36,000 employees), the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Drug Enforcement Administration, 94 US Attorney offices operating within each judicial district in the United States, the US Marshals Service, the Federal Bureau of Prisons, the Antitrust and Civil Rights Divisions, and the US Trustees Program.

The power of the Department of Justice is vast. First and foremost, there is the obligation to uphold the Constitution. Additionally, the Attorney General, as the head of the Department, has virtually unreviewable discretion over many of its activities. Most of DOJ's law enforcement decisions—whether to launch an investigation against individuals or companies, request a subpoena, file or drop charges, commence a civil action, appeal a court decision, or issue a legal opinion to another agency—are not transparent, nor are they subject to meaningful outside review (such as through the Freedom of Information Act or the Administrative Procedures Act). The Attorney General can decide, at his or her discretion, that the DOJ will act to block a merger or let it go through. The Attorney General can decide that resources will be devoted to investigating violations of the Foreign Corrupt Practices Act or can deprioritize such inquiries. The Attorney General can decide whether to intervene in a False Claims Act *qui tam* action, or not.<sup>33</sup> The Attorney General's discretion is practically unrestricted.

Moreover, DOJ's actions have profound effects on the entire executive branch. Not only does DOJ act as counsel for many agencies, but its Office of Legal Counsel is asked to provide legal opinions to the White House and other parts of the executive branch on matters ranging from torture to immigration law enforcement priorities, from the scope of a competitive bidding requirement under the Federal Aid Highway Program to whether the federal government can close a National Guard installation without the consent of the governor of the state where it is located.

The Attorney General plays a unique role in our justice system. He or she not only is the ultimate decision-maker on individual cases, but also sets the Department's overarching strategy.<sup>34</sup> As the President's appointee, the Attorney General has an inherently political role, yet has to resist the impulse to make decisions based on politics, ideology, or personal relationships and protect the professionals, attorneys, and agents who work for the Department, allowing them to work disinterestedly, free from partisanship or bias.

The integrity and impartiality of the Attorney General must be above reproach. As two legal ethics scholars recently noted: "The law presupposes that prosecutors make...decisions disinterestedly, unaffected by their own self-interest or the interests of others. Public confidence in the fairness of the criminal justice system demands this."<sup>35</sup>

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<sup>33</sup> To be sure, these decisions are made in consultation with and on the advice of other attorneys and staff at the Department and the FBI. But the ultimate decision rests with the Attorney General.

<sup>34</sup> See e.g. Department of Justice, "Strategic Plans," last modified October 28, 2015, accessed January 7, 2017. <https://www.justice.gov/publications/strategic-plans>

<sup>35</sup> Bruce Green & Rebecca Roiphe, "Rethinking Prosecutors' Conflicts of Interest," *Boston College Law Review*, Volume 58, Issue 2, p. 4 (2017). <http://ssrn.com/abstract=2849658>

In 1935, when the Supreme Court considered a case involving prosecutorial misconduct, in *Berger v. United States*, it laid out the duties and obligations of a government attorney:

The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all, and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law...<sup>36</sup>

It is imperative, therefore, that if Senator Sessions becomes Attorney General, he address the issues raised by the campaign contributions he has accepted during his political career. Although the contributions were legal and given to him in his capacity as a candidate for the Senate, they nevertheless indicate financial and professional relationships between him and his donors—entanglements that could suggest the appearance of bias.

Government employees must adhere to principles of ethical conduct. They must perform their duties honestly, acting impartially and not giving preferential treatment to any private organization or individual.<sup>37</sup> The extensive campaign contributions from the very companies or people Senator Sessions may be called upon to sue, prosecute, or investigate puts him in an awkward position, at risk of crossing the line into bias or appearing to cross that line with every decision he makes regarding them. It is perfectly clear that were he to favor a former donor, he would violate the ethical pledge. Unfortunately, as the next section of this report outlines, there are no clear rules or procedures governing how Senator Sessions should avoid these issues. He is not required to step aside (i.e. recuse) from all matters involving his donors. It is unclear if he must recuse on a case-by-case basis. And if he were to do so, the standard for evaluating those individual cases is unknown.

In general, the public at large is suspicious about the impact of campaign contributions on our political system. In a 2015 New York Times-CBS national poll, 84 percent of the respondents indicated that they felt money has too much influence in political campaigns. Eighty-five percent felt that politicians promote policies that directly help their donors most or some of the time.<sup>38</sup>

The impact of the prior or ongoing financial relationships of prosecutors on the administration of justice has often been a matter of concern.

Not all Attorneys General have been above reproach, and in the early years of our nation personal interests were dangerously comingled with the public interest.<sup>39</sup> Prior to his

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<sup>36</sup> *Berger v. United States*, 295 U.S. 78, 88 (1935).

<sup>37</sup> 5 C.F.R. § 2635.101(b)

<sup>38</sup> "A New York Times/CBS News Poll on Money and Politics," *The New York Times*, June 2, 2015.

<http://www.nytimes.com/interactive/2015/06/01/us/politics/document-poll-may-28-31.html>

<sup>39</sup> When the first Attorneys General were appointed they were significantly under-compensated, and consequently all maintained outside private practices. The first Attorney General, Edmond Randolph, George Washington's aide-de-camp during the Revolutionary War, started at his post with "no clerk, no files, no furniture, and no office space. He had to write out his own opinions, letters, and briefs." The first Attorney General to leave his private practice was Caleb Cushing, who became Attorney General under President Franklin Pierce in 1853. Abandoning private practice entailed significant financial sacrifice. In 1859, the year before Edwin Stanton became President James Buchanan's Attorney General, he "earned a handsome income of \$40,000, plus bonuses and expenses. As Attorney General, his annual salary dropped to \$8,000." Norman Spaulding, "Professional Independence in the Office of the Attorney General," *Stanford Law Review*, Vol. 60, Issue 6, (2008), pp. 1953-54. (Hereinafter "Professional Independence in the Office of the Attorney General")

appointment as Attorney General under President Grover Cleveland, Richard Olney fretted in a letter to one of his railroad clients. "Among other things I want to find out is where I am going to stand with my present clients...I am not a millionaire and cannot take any office of the sort without a good deal of pecuniary sacrifice—just how much I should like to ascertain." Olney's antipathy toward antitrust law, and consequently his under-enforcement of the Sherman Act, has often been attributed to his entanglements with his previous and prospective post-government clients.<sup>40</sup> Olney returned to lucrative private practice in 1897 after Cleveland's term expired.

Almost 25 years later, Attorney General Harry Daugherty was caught up in the Teapot Dome scandal during the Warren Harding Administration. Teapot Dome involved the secret leasing of land holding oil reserves to companies that bribed the then-Secretary of the Interior for the privilege. Daugherty, who "passed on the leases at issue in the Teapot Dome scandal and appears to have been involved in the attempted cover up, was also twice charged and tried for conspiracy to defraud the government for taking money from a German company whose assets had been seized during World War I."<sup>41</sup>

The connection between politics, campaign contributions, and the administration of justice led to the resignation of an Attorney General in the midst of the Watergate scandal. In 1972, International Telephone and Telegraph (ITT) pledged \$400,000 to the Republican National Committee in exchange for a promise from the White House that the Administration would drop an antitrust lawsuit against it and would not challenge the company's proposed merger with Hartford Fire Insurance. Money in hand, President Richard Nixon called then-Deputy Attorney General Richard Kleindienst. The conversation was recorded:

Nixon: ...The I.T.T. thing—stay the hell out of it. Is that clear? That's an order.  
Kleindienst: Well, you mean the order is to—  
Nixon: The order is to leave the God damn thing alone.... I do not want [Richard] McLaren [the head of DOJ's Antitrust Division] to run around prosecuting people, raising hell about conglomerates, stirring things up..."  
Kleindienst: Well, Mr. President—  
Nixon: Or either he resigns, I'd rather have him out anyway. I don't like the son-of-a-bitch...  
Kleindienst: The brief has to be filed tomorrow...  
Nixon: Your—my order is to drop the God damn thing. Is that clear?  
Kleindienst: Yeah, I understand that.<sup>42</sup>

When asked about the interference during his Senate confirmation hearing to be Attorney General, Kleindienst denied he had been pressured. But when the Nixon tape recordings came out, his perjury was revealed, and he was forced to resign. In 1974, he pleaded guilty to lying to Congress.<sup>43</sup>

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<sup>40</sup> William Letwin, *Law and Economic Policy in America: The Evolution of the Sherman Antitrust Act* (Chicago: University of Chicago Press, 1981), p. 118. See also "Professional Independence in the Office of the Attorney General," p. 1968 n. 202.

<sup>41</sup> "Professional Independence in the Office of the Attorney General," p. 1957 n.154.

<sup>42</sup> Robert Sobel, *ITT: The Management of Opportunity* (New York: Times Books, 1982), p. 284.

<sup>43</sup> Ciara Torres-Spelliscy, "The I.T.T. Affair and Why Public Financing Matters for Political Conventions," Brennancenter.org, March 19, 2014. <https://www.brennancenter.org/blog/itt-affair-why-public-financing-matters-political-conventions>

Though Kleindienst's successor, Elliot Richardson, held office for only a few months before resigning rather than follow an order from the President that he regarded as unethical, he established a new office of management and finance within the DOJ. Today, that office houses DOJ's Departmental Ethics Office. Then, in the wake of President Nixon's resignation, the new Attorney General appointed by President Gerald Ford, Edward Levi, established DOJ's Office of Professional Responsibility to investigate allegations of misconduct by Department employees.<sup>44</sup> A Project On Government Oversight report found that OPR has a number of problems and is too opaque.<sup>45</sup> Even so, a new era in ethics compliance had been inaugurated at the Department of Justice. Not only was ethics compliance improved, but the laws themselves became stricter as a wave of new campaign finance laws was enacted significantly reshaping the regulation of money in politics.<sup>46</sup>

In recent years, the recusal of the Attorney General from cases due to financial or political relationships has become a matter of semi-regular commentary.<sup>47</sup> Two recent instances stand out:

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<sup>44</sup> Department of Justice Order No. 635-74, 40 Fed. Reg. 58,643 (Dec. 18, 1975); See also Judith B. Wish, "The United States Department of Justice's Office of Professional Responsibility," Resource Material Series No. 80: p. 267. [http://www.unafel.or.jp/english/pdf/RS\\_No80/No80\\_30VE\\_Wish.pdf](http://www.unafel.or.jp/english/pdf/RS_No80/No80_30VE_Wish.pdf)

<sup>45</sup> Project On Government Oversight, *Hundreds of Justice Department Attorneys Violated Professional Rules, Laws, or Ethical Standards*, March 13, 2014. <http://www.pogo.org/our-work/reports/2014/hundreds-of-justice-attorneys-violated-standards.html>

<sup>46</sup> See Robert E. Mutch, *Buying the Vote* (New York: Oxford University Press, 2014), pp. 137-140.

<sup>47</sup> In November 2015, a group of five former Justice Department prosecutors, including former US Attorney for the Southern District of New York Rudolph Giuliani, and Senator Sessions called on Attorney General Loretta Lynch to formally recuse herself from consideration of possible instances of misconduct by then-Secretary of State Hillary Clinton. "Recusal is a formal process. It is a written document specifically describing the scope of the recusal and designating the official in charge of the recused matter. If General Lynch went through the proper procedure for recusal, she has not publicly shared it," they opined, expressing concern about General Lynch's 39-minute meeting with Secretary Clinton's husband, former President Bill Clinton. Rudy Giuliani, "Giuliani, Sessions, Keating, et al: Time for Loretta Lynch to appoint a Special Counsel," Foxnews.com, November 5, 2016. <http://www.foxnews.com/opinion/2016/11/05/giuliani-sessions-keating-et-al-time-for-loretta-lynch-to-appoint-special-counsel.html>

In 2009, then-Attorney General Eric Holder recused himself from considering whether DOJ would charge baseball pitcher Rodger Clemens for lying to Congress about steroid use because General Holder's previous law firm, Covington & Burling, had Clemens as a client. Associated Press, "Holder cites conflict of interest," ESPN.com, March 11, 2009. <http://www.espn.com/mlb/news/story?id=3969529>

General Holder similarly recused himself from consideration of charges against UBS due to his prior representation of that company while in private practice at Covington & Burling. However, during his time as Attorney General, Holder was criticized for failing to prosecute banks, and press reports suggested that failure could be linked to his former law firm's representation of numerous banking clients. "Both the Justice Department and Covington declined to say if either official [Holder and Criminal Division head Lanny Breuer] had personally worked on matters for the big mortgage industry clients. Justice Department spokeswoman Tracy Schmalzer said Holder and Breuer had complied fully with conflict of interest regulations, but she declined to say if they had recused themselves from any matters related to the former clients." Scot J. Paltrow, "Insight: Top Justice officials connected to mortgage banks," Reuters, January 20, 2012. <http://www.reuters.com/article/us-usa-holder-mortgage-idUSTRE80J0PH20120120>

In 2006, a group of 31 Democratic Senators called on Gonzales to be recused from the investigation and prosecution of political corruption matters involving lobbyist Jack Abramoff. "In light of your previous service as White House Counsel and your close connection to many Administration officials, the appearance of conflict looms large as the investigation has potentially widened to include Administration officials. FBI officials have said the Abramoff investigation "involves systemic corruption within the highest levels of government," the Senators wrote to the Attorney General. General Gonzales was not recused. Charles E. Schumer Press Release, "Dems Call on A.G. Gonzales to Recuse Himself from Abramoff Case," July 25, 2006. <https://www.schumer.senate.gov/newsroom/press-releases/dems-call-on-ag-gonzales-to-recuse-himself-from-abramoff-case>

- In 2002, then-Attorney General John Ashcroft was recused from consideration of the Enron case. He had accepted \$50,000 in campaign contributions from the company or its employees.<sup>48</sup>
- In 2005, then-Attorney General Alberto Gonzales recused himself from consideration of charges against Enron. At the time, the Department did not explain why he recused himself, but press reports indicated that he had done legal work for the company while he was a lawyer in private practice in Texas with Vinson & Elkins and that he had accepted campaign contributions from the company when he ran for the Texas Supreme Court.<sup>49</sup>

The potential conflicts generated when prosecutors have accepted campaign contributions from companies with matters before them also have arisen for state attorneys general. All but seven states elect their attorneys general. Other states have sought to minimize potential conflicts by filling the post by appointment. Maine lawmakers vote on attorney general by secret ballot.<sup>50</sup>

At the extreme end of the spectrum, in 2014, two former attorneys general for Utah were arrested for corruption charges, "accused of trading favors and access to rich businessmen and improperly accepting money, golf getaways, and rides on private planes and a luxury houseboat."<sup>51</sup> Among other things, the two were accused of "accepting at least \$50,000 in cash or campaign contributions from people who faced or expected to face scrutiny from the attorney general's office."<sup>52</sup> An inquiry by the Utah state legislature concluded that one of the Attorneys General had "cultivated alliances and close ties with businessmen in the payday lending and online gambling communities 'for his own professional, personal and political benefit....[that] resulted in a pattern of benefits, including campaign contributions, political favors, and cash and other benefits, flowing back and forth between him and them.'"<sup>53</sup> The charges are still pending.

However, there are numerous press reports of more standard-issue questions regarding conflicts or ethics arising from the acceptance of campaign contributions by state attorneys general.<sup>54</sup>

- Florida: In 2013, while Florida's Attorney General was publicly considering whether to join an investigation into Trump University, she solicited a \$25,000 donation from Donald Trump. She had previously faced other accusations of reassigning staff attorneys for too vigorously

<sup>48</sup> David Johnston, "ENRON'S COLLAPSE: THE INVESTIGATION; Justice Dept.'s Inquiry Into Enron Is Beginning to Take Shape, Without Big Names," *The New York Times*, January 16, 2002.

<http://www.nytimes.com/2002/01/16/business/enron-s-collapse-investigation-justice-dept-s-inquiry-into-enron-beginning-take.html>

<sup>49</sup> "Gonzales Steps Down From Enron Probe," Foxnews.com, April 10, 2005.

<http://www.foxnews.com/story/2005/04/10/gonzales-steps-down-from-enron-probe.html>

<sup>50</sup> Theodore Kim, "Texas attorney general race donations raise conflict questions," *Dallas Morning News*, September 2010. <http://www.dallasnews.com/news/local-politics/2010/09/18/20100917-Texas-attorney-general-race-donations-raise-5630>

<sup>51</sup> Jack Healy, "Two Former Attorneys General in Utah Are Charged With Corruption," *The New York Times*, July 15, 2014. [https://www.nytimes.com/2014/07/16/us/politics/two-former-attorneys-general-in-utah-are-charged-with-corruption.html?\\_r=0](https://www.nytimes.com/2014/07/16/us/politics/two-former-attorneys-general-in-utah-are-charged-with-corruption.html?_r=0)

<sup>52</sup> Michelle L. Price, "2 Utah ex-attorneys general arrested on bribery charges," *Las Vegas Review Journal*, July 15, 2014. <http://www.reviewjournal.com/news/nation-and-world/2-utah-ex-attorneys-general-arrested-bribery-charges>

<sup>53</sup> Matt Pearce, "Two former Utah attorneys general arrested on bribery charges," *Los Angeles Times*, July 15, 2014. <http://www.latimes.com/nation/nationnow/la-na-nn-utah-attorneys-general-20140715-story.html>

<sup>54</sup> Each of the examples illustrates how campaign contributions to prosecutors have created an appearance of impropriety or conflict even if there was not any actual wrongdoing.

investigating campaign contributors and of intervening with other law enforcement agencies on behalf of donors.<sup>55</sup>

- Iowa: In 2014, Iowa's Attorney General was accused of receiving campaign contributions from companies that were under investigation by his office or from attorneys representing those companies.<sup>56</sup>
- Missouri: Missouri's Attorney General accepted contributions from Pfizer and from lawyers representing the company while his office was involved in an investigation into the company's marketing practices.<sup>57</sup>
- New York: An investigation into donations made to the New York Attorney General found they "are often made by industries that office is investigating."<sup>58</sup>
- Texas: The Texas Attorney General accepted a \$100,000 donation from a company his office was jointly investigating for False Claims Act violations with DOJ, raising concerns about his vigilance in pursuing the matter.<sup>59</sup>
- Utah: In 2015, the Associated Press reported that the Utah Attorney General "accepted a \$5,000 campaign donation from a contact lens seller based in the state after his office began defending a new law that critics say was written at the company's behest."<sup>60</sup>
- Vermont: In 2015, the Governor of Vermont appointed an independent investigation to look into allegations that the Vermont Attorney General had accepted campaign contributions from a law firm and then hired it to work on a case for the state.<sup>61</sup>
- Washington: In 2014, the Attorney General asked for a donation from 5-Hour Energy, a company his office was in the midst of investigating. The company "compared being solicited for contributions to being pressured to pay 'ransom.' It asked, 'Is it appropriate for an attorney general to ask for money from a company they plan to sue?'"<sup>62</sup>

In at least two of these instances, further action has been taken to address the issues raised. In New York, the state's Joint Commission on Public Ethics in 2016 issued an advisory opinion effectively barring elected officials running for election from soliciting or accepting money from

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<sup>55</sup> Gray Rohrer, "Trump donation is latest ethical jam for Bondi," *Orlando Sentinel*, June 11, 2016.

<http://www.orlandosentinel.com/news/politics/os-pam-bondi-trump-controversy-20160611-story.html>

<sup>56</sup> Kathie Obradovich, "Attorney Tom Miller defends campaign donations," *Des Moines Register*, September 25, 2014.

<http://www.desmoinesregister.com/story/opinion/columnists/kathie-obradovich/2014/09/25/attorney-general-tom-miller-defends-campaign-donations/16232287/>

<sup>57</sup> Eric Lipton, "Lobbyists, Bearing Gifts, Pursue Attorneys General," *The New York Times*, October 28, 2014.

[https://www.nytimes.com/2014/10/29/us/lobbyists-bearing-gifts-pursue-attorneys-general.html?\\_r=0](https://www.nytimes.com/2014/10/29/us/lobbyists-bearing-gifts-pursue-attorneys-general.html?_r=0) (Hereinafter "Lobbyists, Bearing Gifts, Pursue Attorneys General")

<sup>58</sup> "Could Some Political Donations to New York's Attorney General Be a Conflict of Interest," WNYC.org, February 18, 2016. <http://www.wnyc.org/story/could-political-donations-nys-attorney-general-be-conflict-interest/>

<sup>59</sup> Andrea Zelinski, "Paxton accepted \$100K from owner of company under investigation," *Houston Chronicle*, July 27, 2016 <http://www.houstonchronicle.com/news/politics/texas/article/Paxton-accepted-100K-from-owner-of-company-under-8479338.php>

<sup>60</sup> Michelle Price, "A.G. Sean Reyes took donation from 1-800 Contacts," *Deseret News*, May 15, 2015.

<http://www.deseretnews.com/article/865629199/AG-Sean-Reyes-took-donation-from-1-800-Contacts.html>

<sup>61</sup> Neal Goswami, "Draft Report Clears Sorrell of Campaign Finance Illegalities," *VPR.com*, January 21, 2016.

<http://digital.vpr.net/post/draft-report-clears-sorrell-campaign-finance-illegalities#stream/0>

<sup>62</sup> "Lobbyists, Bearing Gifts, Pursue Attorneys General"

"any person or entity which is the active subject of an ongoing exercise of enforcement powers of the elected official or the office of the official..."<sup>63</sup> In Missouri, the state's attorney general adopted a voluntary ban on accepting contributions from entities (and their law firms) under investigation by his office, and a 90-day ban on donations from companies after an investigation is closed. Allegations of improper donations to the Missouri Attorney General have nevertheless persisted.<sup>64</sup>

In the wake of a *New York Times* investigation in 2014 that uncovered some of the examples above, James E. Tierney, a former attorney general in Maine who serves as director of Columbia University's National State Attorneys General program told the paper: "It's a time to reset the clock, to turn back the dial and to reconsider how attorney general offices are operating... The agenda in these offices has to be driven by the most important issues facing the attorneys general, not by contributors."

*The New York Times* editorial board warned after the investigation was reported:

Politics at all levels has become dominated by those with enough money to spend lavishly on electing public officials and then pushing them for favors. In a recent investigative report, Eric Lipton of *The Times* revealed that an entire industry has sprung up to lobby state attorneys general on behalf of companies that are under scrutiny, or that need special legal benefits from a state.<sup>65</sup>

Senator Sessions is in a different position from the state Attorneys General noted above. Unlike them, he will be required to cease all fundraising activity if he becomes Attorney General. However, as the examples of former Attorneys General Ashcroft and Gonzales indicate, previous fundraising can still be a reason to recuse. The issue, then, is how to ensure the office of the Attorney General does not become, as *The New York Times* noted, "dominated by those with enough money to spend lavishly on electing public officials and then pushing them for favors."

### **Current Recusal and Conflict Rules Are Ad Hoc and Not Transparent**

There are many open questions about how the potential conflicts will be dealt with if Senator Sessions becomes Attorney General. Does Senator Sessions have to recuse himself from matters involving his donors? How will he decide whether to recuse? Based on a case-by-case analysis? Based on a bright-line rule, such as the amount of contributions over a particular period? And who in the DOJ will make those decisions? Is the Attorney General at liberty to accept or reject advice given by DOJ ethics attorneys without review? How will recusals be reported? Will the Attorney General err on the side of prudence in problematic situations even if recusal is not strictly required? Or will he only recuse when precisely required to?

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<sup>63</sup> State of New York, Joint Commission on Public Ethics, Advisory Opinion No. 16-02, January 26, 2016. <http://www.jcope.ny.gov/advice/jcope/2016/AO%2016-02%20FINAL.pdf>

<sup>64</sup> Karyn Bruggeman, "AT&T Donation to Koster Highlights Conflict-of-Interest Policy in Missouri Governor Campaign," *The Atlantic*, November 3, 2015. <http://www.theatlantic.com/politics/archive/2015/11/atampt-donation-to-koster-highlights-conflict-of-interest-policy-in-missouri-governor-campaign/434769/>

<sup>65</sup> Editorial, "Attorneys General for Sale," *The New York Times*, November 20, 2014. <https://www.nytimes.com/2014/11/21/opinion/attorneys-general-for-sale.html>



The examples in the preceding section point to a lack of guidance for top prosecutors on how to handle the ethical issues that arise when they have also actively solicited or accepted campaign contributions from companies affected by their work. The process by which a state or United States Attorney General decides to consider recusal and the standard by which he or she evaluates the conflict issues raised are opaque. Even their ultimate decision on whether to recuse is shrouded in mystery, often not made public, and the reasoning left to the imagination. It should not be. The stakes are too high.

Five officials are assigned to the office of the Attorney General and several other components of DOJ, such as the office of the Deputy Attorney General and the Solicitor General,<sup>66</sup> to administer the ethics component of the office. This includes providing regular ethics training on, for example, compliance with the Hatch Act, the use of government property, and travel restrictions.<sup>67</sup> When and if Senator Sessions starts his job as Attorney General, we understand that the officials will undertake an initial screening and evaluation of potential ethical issues. That initial screening would include an examination of Senator Sessions' financial holdings and would evaluate whether he must recuse himself from certain matters, for example, because of his wife's or children's employment. Whether the initial screening would also include a comprehensive review of campaign contributions is unclear.

The ethics officials and Senator Sessions would be guided by a number of guidelines and provisions that deal with how prosecuting attorneys are to maintain their impartiality. In general they stand for the principle that the Attorney General cannot participate in cases where his relationship with someone would raise concerns about favoritism, bias, or predisposition. Even when not strictly required to, prosecutors often recuse themselves when there is the barest hint of a conflict of interest, as in the Enron recusals by Attorneys General Ashcroft and Gonzales.

However, there are no clear rules governing whether the donations Senator Sessions has accepted create actual or potential conflicts of interest. Were he moving into the government from private practice, the rules would be clearer. For example, an attorney in private practice who had Boeing as a client, even for a relatively small fee, would be almost certainly recused from dealing with Boeing were he or she to become a prosecutor. But it is entirely unclear whether a politician who accepted the same sum in contributions from Boeing would be similarly recused.

Senator Sessions will be guided by the rules of professional conduct, particularly the American Bar Association's *Model Rules of Professional Conduct*. The most relevant portion of those Rules is Rule 1.11(a) and (d), which deals with "Special Conflicts of Interest for Former and Current Government Officers and Employees."

The rule provides:

(a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government...

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<sup>66</sup> Department of Justice, "Ethics Officials," last modified January 4, 2017, accessed January 5, 2017. <https://www.justice.gov/jmd/ethics-officials>

<sup>67</sup> See, e.g., Josh Greenstein, "Justice Department orders more ethics training for lawyers," *Politico*, August 8, 2016. <http://www.politico.com/story/2016/08/justice-department-orders-ethics-training-after-immigration-suit-controversy-226805>

(2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation....

(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:...

(2) shall not:

(i) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent, confirmed in writing...<sup>68</sup>

Senator Sessions should also be guided by *ABA Model Rules of Professional Conduct*, Rule 1.9(a) which states:

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.<sup>69</sup>

Neither provision is directly on point. In acting as a legislator Senator Sessions was not engaged in the practice of law. Consequently, he cannot clearly be said to have "participated personally and substantially" in a "matter"<sup>70</sup> within the meaning of Rule 1.11 (a) or (d). The State of Alabama cannot be strictly construed as the Senator's "client" under Rule 1.11(a) or Rule 1.9(a). And, in any event, the rules do not cover the situation in which a lawyer who has served in one branch of government, where he is not strictly speaking practicing law, transfers to another branch of government and does practice law. Moreover, neither rule deals with the actual conflict or appearance of a conflict that might be raised by campaign contributions made to a lawyer about to assume prosecutorial power.

In addition to the Rules of Professional Conduct, the Ethics Pledge implemented by Executive Order 13490 would also guide Senator Sessions.<sup>71</sup> That Pledge includes the following relevant provisions:

2. Revolving Door Ban: All Appointees Entering Government. I will not for a period of 2 years from the date of my appointment participate in any particular matter involving

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<sup>68</sup> American Bar Association Center for Professional Responsibility, *Model Rules of Professional Conduct*, 1983, Rule 1.11 (Hereinafter *Model Rules of Professional Conduct*)

<sup>69</sup> *Model Rules of Professional Conduct*, Rule 1.9

<sup>70</sup> The rule defines "matter" as:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties, and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

<sup>71</sup> Exec. Order No. 13490, 75 Fed. Reg. 4673 (2009). <https://www.gpo.gov/fdsys/pkg/FR-2009-01-26/pdf/E9-1719.pdf>

specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.<sup>72</sup>

As with the Rules, the pledge provision is not precisely on point since as Attorney General, Senator Sessions would not be entering government (he is already in government and would be switching between branches); it is not clear that the State of Alabama could be considered a “client”; and the pledge does not in any way address the question of relations to donors. Moreover, barring Senator Sessions from participating in matters “directly and substantially related to [his] former employer,”—the Senate—if read broadly would essentially bar him from the job since almost everything involving the Department of Justice was the subject of the Senate’s and his oversight.<sup>73</sup>

Senator Sessions would also be governed by the Department of Justice Ethics Handbook, which seeks to provide guidance for DOJ employees on numerous applicable statutes and orders.<sup>74</sup> Going forward, Senator Sessions would of course be barred from seeking any further political contributions under the Hatch Act.<sup>75</sup> But the Handbook is unclear about how he should insulate himself from the potential impact of prior campaign contributions.

Senator Sessions would also be bound by Department Regulations, including one relating to recusals due to personal or political relationships:

28 CFR §45.2 Disqualification arising from personal or political relationship.

(a) Unless authorized under paragraph (b) of this section, no employee shall participate in a criminal investigation or prosecution if he has a personal or political relationship with:

(1) Any person or organization substantially involved in the conduct that is the subject of the investigation or prosecution; or

(2) Any person or organization which he knows has a specific and substantial interest that would be directly affected by the outcome of the investigation or prosecution.

(b) An employee assigned to or otherwise participating in a criminal investigation or prosecution who believes that his participation may be prohibited by paragraph (a) of this

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<sup>72</sup> Robert Cusick, “Memorandum to Agency Heads and Designated Agency Ethics Officials re. Executive Order; Ethics Pledge,” Office of Government Ethics, January 22, 2009.

[https://www2.oge.gov/Web/OGESites/All%20Documents/912EE96BCFEC4A0185257E96005FBB85/\\$FILE/DO-09-003.pdf?open](https://www2.oge.gov/Web/OGESites/All%20Documents/912EE96BCFEC4A0185257E96005FBB85/$FILE/DO-09-003.pdf?open)

<sup>73</sup> Robert Cusick, “Memorandum to Designated Agency Ethics Officials re Ethics Pledge: Revolving Door Ban—All Appointees Entering Government,” Office of Government Ethics, March 26, 2009.

[https://www.oge.gov/Web/OGESites/All%20Documents/1231E7FF31E2E54985257E96005FBB7E/\\$FILE/DO-09-011.pdf?open](https://www.oge.gov/Web/OGESites/All%20Documents/1231E7FF31E2E54985257E96005FBB7E/$FILE/DO-09-011.pdf?open)

<sup>74</sup> Department of Justice, “Ethics Handbook For On and Off-Duty Conduct,” January 2016, last modified February 3, 2016, accessed January 5, 2017. <https://www.justice.gov/jmd/ethics-handbook>

The handbook addresses the following statutes or Executive Orders: 18 USC §§ 202 to 209, Executive Order 12674 on Principles of Ethical Conduct as amended by EO 12731, the Uniform Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR Part 2635, Department of Justice regulations at 5 CFR Part 3801 that supplement the uniform standards, and additional Department regulations at 28 CFR Part 45, and Executive branch-wide standards of conduct at 5 USC § 735.

<sup>75</sup> 5 USC §§ 7321-21

section shall report the matter and all attendant facts and circumstances to his supervisor at the level of section chief or the equivalent or higher. If the supervisor determines that a personal or political relationship exists between the employee and a person or organization described in paragraph (a) of this section, he shall relieve the employee from participation unless he determines further, in writing, after full consideration of all the facts and circumstances, that:

(1) The relationship will not have the effect of rendering the employee's service less than fully impartial and professional; and

(2) The employee's participation would not create an appearance of a conflict of interest likely to affect the public perception of the integrity of the investigation or prosecution.

(c) For the purposes of this section:

(1) Political relationship means a close identification with an elected official, a candidate (whether or not successful) for elective, public office, a political party, or a campaign organization, arising from service as a principal adviser thereto or a principal official thereof; and

(2) Personal relationship means a close and substantial connection of the type normally viewed as likely to induce partiality. An employee is presumed to have a personal relationship with his father, mother, brother, sister, child and spouse. Whether relationships (including friendships) of an employee to other persons or organizations are "personal" must be judged on an individual basis with due regard given to the subjective opinion of the employee.<sup>76</sup>

It does not appear that relationships with campaign contributors would be considered a "political relationship" under this provision. Whether a campaign contributor might have a "personal relationship" with the donor is an open question based on the specific facts in each instance.

Overall, these provisions are germane to the conflicts possibly arising from prior campaign contributions even if they are not directly on point. Together they stand for the proposition that prior business and professional relationships may affect how lawyers behave as they undertake new roles and responsibilities. They suggest that an effort must be made to ensure that those prior involvements do not bleed into new responsibilities.

The above is not an exhaustive review of all statutes, regulation, orders, or other provisions that may have bearing on this matter. However, it is representative of the major ethics and conflict-of-interest standards that would guide Senator Sessions as Attorney General.

### **Steps Senator Sessions Can Take to Address the Issues Raised**

The impact of campaign contributions on our political process is a matter of considerable debate in the political, academic, and journalistic literature. No one can say definitively that a particular contribution to Senator Sessions will or will not unduly influence his decision-making. But as is

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<sup>76</sup> 28 C.F.R. §45.2

clear from the examples above, the impact of campaign contributions on the administration of justice has been a matter of public discussion and reporting over the last decade.

In a recent Supreme Court case dealing with judicial recusals, Justice Anthony Kennedy noted: “[b]ias is easy to attribute to others and difficult to discern in oneself.”<sup>77</sup>

A Brennan Center report on the impact of campaign contributions on the judiciary noted:

Empirical psychologists refer to the “bias blind spot”— studies show that individuals perceive their personal connections to a given issue as a source of useful information improving accuracy, while viewing the personal connections of others as evidence of bias.<sup>78</sup>

“Even well intentioned prosecutors are subject to biases that must be kept in check,” Fordham Law Professor and legal ethicist Bruce Green and University of San Diego School of Law Professor Fred Zacharias noted.<sup>79</sup>

To avoid any potential conflicts from the outset, Senator Sessions should commit himself to a clear and open effort to deal with this matter. He should initiate a process, in consultation with ethics lawyers, to evaluate the situation and to assure the public that the matters raised are being taken seriously.

Two solutions suggest themselves.

First, Senator Sessions could commit to a bright-line rule where he will recuse himself from any matter involving a donor<sup>80</sup> from the last two years or any donor who gave more than \$5,000 in the last decade.

Second, Senator Sessions could commit to an independent written and public review of this matter by DOJ’s Ethics Office and the Office of the Inspector General.<sup>81</sup> He would then take action publicly in accordance with that review and recuse himself (or not) based upon the report’s recommendation.

Senator Sessions is in the unique position to serve as a model for all prosecutors in the United States for how to handle the complex question of campaign fundraising and its impact on the impartial administration of justice. Today, the procedures and ethical standards followed by the Attorney General, most state attorneys general, and, for that matter, by elected local county and

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<sup>77</sup> *Williams v. Pennsylvania*, decided by the United States Supreme Court on June 9, 2016. The opinion has not yet been published in official reporter; see slip opinion at page 6.

[https://www.supremecourt.gov/opinions/15pdf/15-5040\\_6537.pdf](https://www.supremecourt.gov/opinions/15pdf/15-5040_6537.pdf)

<sup>78</sup> Matthew Menendez and Dorothy Samuels, “Judicial Recusal Reform: Toward Independent Consideration of Disqualification,” Brennancenter.org, 2016.

[https://www.brennancenter.org/sites/default/files/publications/Judicial Recusal Reform.pdf](https://www.brennancenter.org/sites/default/files/publications/Judicial%20Recusal%20Reform.pdf)

<sup>79</sup> Bruce A. Green and Fred C. Zacharias, “The U.S. Attorneys Scandal’ and the Allocation of Prosecutorial Power,” *Ohio State Law Journal*, Vol. 69, Issue 187, p. 189 (2008).

<sup>80</sup> By donor we refer to any individual, company, trade association, law firm, or other legal entity or combination thereof that has made a campaign contribution to Senator Sessions or his leadership PAC. We would therefore consider, for example, a situation in which company X’s PAC gave Senator Sessions’ Campaign Committee \$2,000 and company X’s employees gave his leadership PAC \$3,000 to reach the \$5,000 threshold.

<sup>81</sup> The DOJ ethics officers are civil service appointees who work under the supervision of the Attorney General. In order to ensure a level of independence in this suggested review, we believe the Office of the Inspector General should be included since the Inspector General maintains a greater level of autonomy from DOJ’s chain of command.

city prosecutors are unclear. There are no established best practices. We have been unable to find a comprehensive legal analysis of the ethical questions. It is a vacuum waiting to be filled. The public's confidence in the fair and impartial administration of justice depends upon how Senator Sessions acts.

## **Appendix A**

**Organizations that have Donated to Senator Jeff Sessions, and Subsets Thereof**

January 9, 2016  
Project On Government Oversight  
1100 G St. NW Suite 500  
Washington, DC 20005  
(202) 347-1122 | [www.pogo.org](http://www.pogo.org)



**Appendix A to At Least One-Third of Attorney General Nominee's Top Donors Have Matters Involving the Department of Justice**

<b>List of All \$5,000+ Donors to Senator Jeff Sessions over the Last Ten Years</b>	
<b>Company Name</b>	<b>Amount</b>
3M Co	\$13,000
AAA Cooper Transportation	\$7,200
Adams & Reese	\$12,000
AFLAC Inc	\$48,500
Airbus Group	\$11,000
Alabama Farmers Federation	\$20,000
Alabama Labels & Graphics	\$9,200
Alabama Peanut Producers Assn	\$5,000
Alamo PAC	\$15,000
American Academy of Orthopaedic Surgeons	\$5,000
American Apparel Inc	\$5,000
American Bankers Assn	\$43,500
American Cast Iron Pipe	\$11,200
American College of Cardiology	\$10,000
American Council of Engineering Cos	\$12,500
American Dental Assn	\$61,000
American Equity Insurance	\$9,200
American Express	\$6,000
American Forest & Paper Assn	\$12,000
American Hospital Assn	\$17,200
American Institute of CPAs	\$26,500
American Interventional Pain Physicians	\$15,000
American Iron & Steel Institute	\$5,000
American Lighting Assn	\$7,500
American Medical Assn	\$5,000
American Society of Anesthesiologists	\$10,500
American Trucking Associations	\$6,500
Americans for Good Government	\$10,000
AmerisourceBergen Corp	\$9,500
Amgen Inc	\$19,500
Anadarko Petroleum	\$10,000
Anheuser-Busch InBev	\$12,000
Aronov Realty Management	\$5,200
Associated Builders & Contractors	\$15,000
AT&T Inc	\$54,500

Sources: Our data was obtained from the Center for Responsive Politics which provided us with a tally of contributions to Senator Session's campaign committee and leadership PAC (Tallatchee Creek Inc.) from corporate or organizational PACS, other PACS, and employees of the corporation or organization. The data covered a 10-year period up to the most recent 2016 Federal Election Commission filing deadline.

Appendix A to *At Least One-Third of Attorney General Nominee's Top Donors Have Matters Involving the Department of Justice*

<b>List of All \$5,000+ Donors to Senator Jeff Sessions over the Last Ten Years (cont.)</b>	
<b>Company Name</b>	<b>Amount</b>
Austal USA	\$11,700
Automotive Free International Trade PAC	\$15,000
BAE Systems	\$24,500
Balch & Bingham	\$93,800
Banco Bilbao Vizcaya Argentaria	\$29,700
Bank of America	\$12,000
BASF SE	\$5,500
Battle Born PAC	\$10,000
Bay Securities	\$5,600
BB&T Corp	\$8,000
Bechtel Group	\$10,000
Berkshire Hathaway	\$27,500
BGR Group	\$26,664
BL Harbert International	\$5,000
Blue Cross/Blue Shield	\$44,000
Bluegrass Cmte	\$20,000
BNSF Railway	\$11,000
Bockorny Group	\$5,500
Boeing Co	\$32,750
BP	\$7,000
Bradley, Arant et al	\$33,212
Brasfield & Gorrie	\$9,200
Brown-Forman Corp	\$10,000
Brownstein, Hyatt et al	\$7,800
Campaign for Working Families	\$5,000
Cardiology Consultants PC	\$5,100
CC Media Holdings (rebranded as "iHeartMedia, Inc." in 2014)	\$10,500
CenterPoint Energy	\$5,500
Cerberus Capital Management	\$11,500
Chesapeake Energy	\$10,000
Chevron Corp	\$17,500
Citigroup Inc	\$13,000
Citizens Bank of Winfield	\$6,600
City Capital Corp	\$9,200
Cobham Holdings	\$5,220
Collazo Enterprises	\$25,800

Appendix A to At Least One-Third of Attorney General Nominee's Top Donors Have Matters Involving the Department of Justice

<b>List of All \$5,000+ Donors to Senator Jeff Sessions over the Last Ten Years (cont.)</b>	
<b>Company Name</b>	<b>Amount</b>
Colonial Properties	\$16,500
Colsa Corp	\$6,600
Comcast Corp	\$27,700
Common Values PAC	\$5,000
Computer Programs & Systems Inc	\$5,000
Computer Sciences Corp	\$9,500
ConocoPhillips	\$6,750
Cooper Group of Companies	\$8,600
Credit Union National Assn	\$8,000
Crossroads Strategies	\$8,716
CSX Corp	\$56,500
CVS/Caremark Corp	\$15,000
Daiichi Sankyo Inc	\$8,000
Daily Access Corp	\$6,000
Davidson Technologies	\$13,500
Defend America PAC	\$20,000
Deloitte LLP	\$27,500
Denali Leadership PAC	\$8,000
Dese Research	\$7,100
DirecTV	\$24,000
Dirigo PAC	\$7,500
DLA Piper	\$13,000
Donohue Industries	\$5,000
Drummond Co	\$69,000
Dunn Investment	\$8,500
DuPont Co	\$5,000
Dynetics Inc	\$18,600
Edison Electric Institute	\$5,000
El Paso Corp	\$7,000
Endo Health Solutions	\$6,000
Energen Corp	\$12,500
EnergySolutions Inc	\$5,000
Entergy Corp	\$5,000
Ernst & Young	\$18,500
European Aeronautic Defense & Space (Airbus)	\$27,000
Experian	\$18,000

**Appendix A to At Least One-Third of Attorney General Nominee's Top Donors Have Matters Involving the Department of Justice**

<b>List of All \$5,000+ Donors to Senator Jeff Sessions over the Last Ten Years (cont.)</b>	
<b>Company Name</b>	<b>Amount</b>
Exxon Mobil	\$15,500
Farm Credit Council	\$12,000
Farmer, Farmer et al	\$5,100
FedEx Corp	\$39,500
Fierce, Isakowitz & Blalock	\$6,000
Fine, Geddie & Assoc	\$12,200
Flowers Foods	\$10,200
Freedom Fund	\$20,000
Friends of Israel	\$5,000
Fund for a Conservative Future	\$15,000
Fund for America's Future	\$5,000
General Dynamics	\$11,000
General Electric	\$15,000
Goodrich Management Co	\$5,200
Goodrich Properties	\$5,000
Google Inc	\$8,000
Great Southern Wood Preserving	\$9,600
Growth & Prosperity PAC	\$5,000
Halliburton Co	\$8,500
Hand Arendall LLC	\$13,900
Harbert Management	\$26,800
Harrigan Lumber	\$7,500
HealthSouth Corp	\$38,700
Heartland Values PAC	\$5,000
Helmsing, Leach et al	\$15,100
Hexagon AB	\$25,000
Home Depot	\$40,000
Honeywell International	\$42,500
Huntington Ingalls Industries	\$13,000
Hurt, Norton & Assoc	\$10,200
Impact America	\$5,000
Indep Insurance Agents & Brokers/America	\$7,000
Independent Community Bankers of America	\$6,500
Intel Corp	\$6,000
Intergraph Corp	\$15,000
International Council of Shopping Cntrs	\$7,000

Appendix A to *At Least One-Third of Attorney General Nominee's Top Donors Have Matters Involving the Department of Justice*

<b>List of All \$5,000+ Donors to Senator Jeff Sessions over the Last Ten Years (cont.)</b>	
<b>Company Name</b>	<b>Amount</b>
International Paper	\$56,000
J Smith Lanier & Co	\$10,200
Jim Wilson & Assoc	\$17,400
JM Family Enterprises	\$6,500
Jones Financial Companies	\$7,100
K&L Gates	\$7,300
KBR Inc	\$6,775
Kilpatrick Stockton LLP	\$9,100
King & Spalding	\$6,609
Koch Industries	\$66,700
KPMG LLP	\$19,000
Kz Corp	\$6,000
Lamar Advertising	\$7,500
Lathan Co	\$9,000
Lennar Co	\$5,000
Lockheed Martin	\$89,150
Lowe's Companies	\$5,000
Major League Baseball Commissioner's Ofc	\$12,500
Making Business Excel PAC	\$10,000
Massachusetts Mutual Life Insurance	\$11,000
Maynard, Cooper & Gale	\$23,250
McKool Smith PC	\$6,300
McWane Inc	\$29,400
MeadWestvaco Corp	\$13,000
Merck & Co	\$15,000
Midstream Fuel Service	\$11,200
MINT PAC	\$9,999
Mobile Asphalt	\$5,400
Mobile Infirmary Health System	\$9,000
Mortgage Bankers Assn	\$5,001
National Apartment Assn	\$8,000
National Assn of Broadcasters	\$12,500
National Assn of Convenience Stores	\$10,000
National Assn of Home Builders	\$15,000
National Assn of Insurance & Financial Advisors	\$20,000
National Assn of Realtors	\$19,250

Appendix A to *At Least One-Third of Attorney General Nominee's Top Donors Have Matters Involving the Department of Justice*

<b>List of All \$5,000+ Donors to Senator Jeff Sessions over the Last Ten Years (cont.)</b>	
<b>Company Name</b>	<b>Amount</b>
National Auto Dealers Assn	\$10,000
National Beer Wholesalers Assn	\$12,500
National Cable & Telecommunications Assn	\$20,000
National Cotton Council	\$8,000
National Council of Textile Orgs	\$6,500
National Federation of Independent Business	\$10,000
National Football League	\$5,000
National Mining Assn	\$5,000
National Multi Housing Council	\$14,500
National PAC	\$5,000
National Restaurant Assn	\$5,000
National Rifle Assn	\$5,950
National Rural Electric Cooperative Assn	\$13,000
National Stone, Sand & Gravel Assn	\$6,000
New Republican Majority Fund	\$5,000
News Corporation	\$6,000
Next Century Fund	\$15,000
Nickles Group	\$15,000
Norfolk Southern	\$42,000
NorPAC	\$5,000
Northrop Grumman	\$67,000
Nucor Corp	\$18,450
Occidental Petroleum	\$5,000
Olin Corp	\$7,000
Orbital Sciences Corp	\$17,500
OrrinPAC	\$20,000
Outdoor Advertising Assn of America	\$7,500
Pain Management Center of Paducah	\$6,900
Parker Towing	\$16,300
PepsiCo Inc	\$6,000
Peter G Peterson Foundation	\$8,200
Pierce, Ledyard et al	\$6,600
Pilot & Assoc	\$6,900
Pilot Corp	\$9,200
Pinnacle West Capital	\$19,750
Plumbers/Pipefitters Union	\$5,000

Appendix A to *At Least One-Third of Attorney General Nominee's Top Donors Have Matters Involving the Department of Justice*

<b>List of All \$5,000+ Donors to Senator Jeff Sessions over the Last Ten Years (cont.)</b>	
<b>Company Name</b>	<b>Amount</b>
Potomac Counsel Now (American Continental Group)	\$5,100
Preserving America's Traditions	\$10,000
PricewaterhouseCoopers	\$13,500
Propst Properties	\$5,100
Protective Life Corp	\$6,200
Radiation Therapy Oncology PC	\$9,200
Raytheon Co	\$37,000
Regions Financial	\$32,500
Republican Majority Fund	\$15,000
Resource Management Service LLC	\$6,634
Reynolds Technical Association	\$14,800
Rock City PAC	\$10,000
Rock-Tenn Co	\$6,500
Rockwell Collins Inc	\$6,000
Royer & Brooks	\$6,600
RR&G LLC	\$5,000
Safari Club International	\$5,500
Schering-Plough Corp	\$15,000
Scotch Lumber	\$8,300
Scott Bridge Co	\$15,900
Senate Majority Fund	\$10,000
Senate Victory Fund	\$10,000
Sierra Nevada Corp	\$7,500
Sirote & Permutt	\$10,000
Smith Asset Management	\$5,600
Smith's Inc	\$13,200
Solvay SA	\$5,000
Southeast Wood Treating	\$15,800
Southeastern Property Management	\$5,600
Southern Co	\$142,015
Southern Cotton Growers Inc	\$6,500
State Farm Insurance	\$5,250
State of Alabama	\$14,650
Stephen Bradley & Assoc	\$6,000
T Leavell & Assoc	\$5,300
Teledyne Technologies	\$15,250



Appendix A to *At Least One-Third of Attorney General Nominee's Top Donors Have Matters Involving the Department of Justice*

<b>List of All \$5,000+ Donors to Senator Jeff Sessions over the Last Ten Years (cont.)</b>	
<b>Company Name</b>	<b>Amount</b>
Tenn PAC	\$5,000
Textron Inc	\$12,500
Thompson Realty	\$8,600
Thompson Tractor	\$5,200
Tom Coker & Assoc	\$6,200
Torch Technologies	\$7,100
Torchmark Corp	\$19,100
Total Pain Solutions	\$5,200
Toyota Motor Corp	\$7,500
Travelers Companies	\$7,500
UBS AG	\$5,000
Union Pacific Corp	\$25,500
United Parcel Service	\$19,000
United Technologies	\$20,000
University of Alabama	\$6,250
University of South Alabama	\$11,050
URS Corp	\$8,500
US Steel	\$9,000
Valero Energy	\$5,000
Van Scoyoc Assoc	\$5,500
Vulcan Materials	\$36,250
Wachovia Corp	\$7,500
Wal-Mart Stores	\$15,000
Ward & Olivo	\$6,900
Wellborn Cabinet	\$9,996
Wells Fargo	\$7,100
Wells Real Estate Funds	\$10,300
Westervelt Co	\$6,000
Westwind Technologies	\$6,100
Weyerhaeuser Co	\$9,000
White-Spunner Construction	\$9,200
Williams & Jensen	\$8,000
Wine & Spirits Wholesalers of America	\$15,000
Winston & Strawn	\$9,000
WPP Group	\$25,250

Appendix A to *At Least One-Third of Attorney General Nominee's Top Donors Have Matters Involving the Department of Justice*

<b>Subset of Donors to Senator Jeff Sessions Presenting Potential Conflicts of Interest</b>	
<b>Company Name</b>	<b>Amount</b>
Adams & Reese	\$12,000
American Bankers Assn	\$43,500
American Council of Engineering Cos	\$12,500
American Express	\$6,000
American Forest & Paper Assn	\$12,000
American Hospital Assn	\$17,200
Amgen Inc	\$19,500
Anadarko Petroleum	\$10,000
AT&T Inc	\$54,500
BAE Systems	\$24,500
Balch & Bingham	\$93,800
BASF SE	\$5,500
Berkshire Hathaway	\$27,500
BGR Group	\$26,664
Blue Cross/Blue Shield	\$44,000
Bockorny Group	\$5,500
Boeing Co	\$32,750
BP	\$7,000
Bradley, Arant et al	\$33,212
Brownstein, Hyatt et al	\$7,800
CC Media Holdings (rebranded as "iHeartMedia, Inc." in 2014)	\$10,500
Cerberus Capital Management	\$11,500
Chevron Corp	\$17,500
Citigroup Inc	\$13,000
Collazo Enterprises	\$25,800
Colsa Corp	\$6,600
Comcast Corp	\$27,700
Computer Sciences Corp	\$9,500
Crossroads Strategies	\$8,716
CSX Corp	\$56,500
CVS/Caremark Corp	\$15,000
DirecTV	\$24,000
DLA Piper	\$13,000
DuPont Co	\$5,000
Dynetics Inc	\$18,600
Edison Electric Institute	\$5,000

Appendix A to *At Least One-Third of Attorney General Nominee's Top Donors Have Matters Involving the Department of Justice*

<b>Subset of Donors to Senator Jeff Sessions Presenting Potential Conflicts of Interest (cont.)</b>	
<b>Company Name</b>	<b>Amount</b>
Endo Health Solutions	\$6,000
EnergySolutions Inc	\$5,000
Entergy Corp	\$5,000
Ernst & Young	\$18,500
Exxon Mobil	\$15,500
Fierce, Isakowitz & Blalock	\$6,000
Fine, Geddie & Assoc	\$12,200
General Electric	\$15,000
Google Inc	\$8,000
Halliburton Co	\$8,500
HealthSouth Corp	\$38,700
Honeywell International	\$42,500
Huntington Ingalls Industries	\$13,000
Hurt, Norton & Assoc	\$10,200
Intergraph Corp	\$15,000
International Paper	\$56,000
K&L Gates	\$7,300
KBR Inc	\$6,775
King & Spalding	\$6,609
Koch Industries	\$66,700
Lockheed Martin	\$89,150
Lowe's Companies	\$5,000
Maynard, Cooper & Gale	\$23,250
Merck & Co	\$15,000
Mortgage Bankers Assn	\$5,001
National Assn of Broadcasters	\$12,500
National Assn of Convenience Stores	\$10,000
National Assn of Realtors	\$19,250
National Cable & Telecommunications Assn	\$20,000
National Football League	\$5,000
National Mining Assn	\$5,000
National Restaurant Assn	\$5,000
Nickles Group	\$15,000
Northrop Grumman	\$67,000
Occidental Petroleum	\$5,000
Olin Corp	\$7,000

**Appendix A to At Least One-Third of Attorney General Nominee's Top Donors Have Matters Involving the Department of Justice**

<b>Subset of Donors to Senator Jeff Sessions Presenting Potential Conflicts of Interest (cont.)</b>	
<b>Company Name</b>	<b>Amount</b>
Pinnacle West Capital	\$19,750
Potomac Counsel Now (American Continental Group)	\$5,100
Raytheon Co	\$37,000
Regions Financial	\$32,500
Reynolds Technical Association	\$14,800
Rockwell Collins Inc	\$6,000
RR&G LLC	\$5,000
Safari Club International	\$5,500
Solvay SA	\$5,000
Southern Co	\$142,015
State of Alabama	\$14,650
Textron Inc	\$12,500
Torch Technologies	\$7,100
Toyota Motor Corp	\$7,500
UBS AG	\$5,000
United Technologies	\$20,000
University of South Alabama	\$11,050
US Steel	\$9,000
Valero Energy	\$5,000
Van Scoyoc Assoc	\$5,500
Wal-Mart Stores	\$15,000
Wells Fargo	\$7,100
Williams & Jensen	\$8,000
Winston & Strawn	\$9,000
WPP Group	\$25,250

**Appendix A to At Least One-Third of Attorney General Nominee's Top Donors Have Matters Involving the Department of Justice**

<b>Subset of Donors to Senator Jeff Sessions that have a Lawsuit, Active Consent Decree/Settlement, or Public Investigation Pending</b>	
<b>Company Name</b>	<b>Amount</b>
American Express	\$6,000
Amgen Inc	\$19,500
Anadarko Petroleum	\$10,000
AT&T Inc	\$54,500
BAE Systems	\$24,500
BASF SE	\$5,500
Berkshire Hathaway	\$27,500
Blue Cross/Blue Shield	\$44,000
Boeing Co	\$32,750
BP	\$7,000
CC Media Holdings (rebranded as "iHeartMedia, Inc." in 2014)	\$10,500
Cerberus Capital Management	\$11,500
Chevron Corp	\$17,500
Citigroup Inc	\$13,000
Comcast Corp	\$27,700
Computer Sciences Corp	\$9,500
CSX Corp	\$56,500
CVS/Caremark Corp	\$15,000
DirecTV	\$24,000
DuPont Co	\$5,000
Endo Health Solutions	\$6,000
EnergySolutions Inc	\$5,000
Entergy Corp	\$5,000
Exxon Mobil	\$15,500
General Electric	\$15,000
Google Inc	\$8,000
Halliburton Co	\$8,500
HealthSouth Corp	\$38,700
Honeywell International	\$42,500
Huntington Ingalls Industries	\$13,000
International Paper	\$56,000
KBR Inc	\$6,775
Koch Industries	\$66,700
Lockheed Martin	\$89,150
Lowe's Companies	\$5,000
Merck & Co	\$15,000

**Appendix A to At Least One-Third of Attorney General Nominee's Top Donors Have Matters Involving the Department of Justice**

<b>Subset of Donors to Senator Jeff Sessions that have a Lawsuit, Active Consent Decree/Settlement, or Public Investigation Pending (cont.)</b>	
<b>Company Name</b>	<b>Amount</b>
National Assn of Realtors	\$19,250
National Football League	\$5,000
Northrop Grumman	\$67,000
Occidental Petroleum	\$5,000
Pinnacle West Capital	\$19,750
Raytheon Co	\$37,000
Regions Financial	\$32,500
Rockwell Collins Inc	\$6,000
Solvay SA	\$5,000
Southern Co	\$142,015
State of Alabama	\$14,650
Toyota Motor Corp	\$7,500
UBS AG	\$5,000
United Technologies	\$20,000
University of South Alabama	\$11,050
US Steel	\$9,000
Valero Energy	\$5,000
Wal-Mart Stores	\$15,000
Wells Fargo	\$7,100
WPP Group	\$25,250

**Appendix A to At Least One-Third of Attorney General Nominee's Top Donors Have Matters Involving the Department of Justice**

<b>Subset of Donors to Senator Jeff Sessions that are Trade Associations</b>	
<b>Company Name</b>	<b>Amount</b>
American Bankers Assn	\$43,500
American Council of Engineering Cos	\$12,500
American Forest & Paper Assn	\$12,000
American Hospital Assn	\$17,200
Edison Electric Institute	\$5,000
Mortgage Bankers Assn	\$5,001
National Assn of Broadcasters	\$12,500
National Assn of Convenience Stores	\$10,000
National Cable & Telecommunications Assn	\$20,000
National Mining Assn	\$5,000
National Restaurant Assn	\$5,000
Safari Club International	\$5,500



**Appendix A to At Least One-Third of Attorney General Nominee's Top Donors Have Matters Involving the Department of Justice**

<b>Subset of Donors to Senator Jeff Sessions that are Lobbying Firms</b>	
<b>Company Name</b>	<b>Amount</b>
Adams & Reese	\$12,000
Balch & Bingham	\$93,800
BGR Group	\$26,664
Bockorny Group	\$5,500
Bradley, Arant et al	\$33,212
Brownstein, Hyatt et al	\$7,800
Crossroads Strategies	\$8,716
DLA Piper	\$13,000
Fierce, Isakowitz & Blalock	\$6,000
Fine, Geddie & Assoc	\$12,200
Hurt, Norton & Assoc	\$10,200
K&L Gates	\$7,300
King & Spalding	\$6,609
Maynard, Cooper & Gale	\$23,250
Nickles Group	\$15,000
Potomac Counsel Now (American Continental Group)	\$5,100
RR&G LLC	\$5,000
Van Scoyoc Assoc	\$5,500
Williams & Jensen	\$8,000
Winston & Strawn	\$9,000

*Appendix A to At Least One-Third of Attorney General Nominee's Top Donors Have Matters Involving the Department of Justice*

<b>Subset of Donors to Senator Jeff Sessions that are Government Contractors</b>	
<b>Company Name</b>	<b>Amount</b>
Collazo Enterprises	\$25,800
Colsa Corp	\$6,600
Dynetics Inc	\$18,600
Ernst & Young	\$18,500
Intergraph Corp	\$15,000
Olin Corp	\$7,000
Reynolds Technical Association	\$14,800
Textron Inc	\$12,500
Torch Technologies	\$7,100

## Methodology Note:

### How We Decided that a Company Had a Matter of Interest Before the United States

#### Category 1. Companies with an active lawsuit, active consent decree/settlement, or public investigation pending before DOJ

We made several judgment calls where we felt that a recent settlement or consent decree likely would involve ongoing oversight. These were settlements that typically required ongoing behavioral remedies or monetary payouts to injured consumers. It also included many EPA/Superfund cases where the company agreed to a clean-up. In those cases, the EPA would be most active in monitoring compliance, but DOJ would also continue to be involved. There were a few settlements where we were not entirely certain whether ongoing oversight might be required. We did include them in our tally but noted the ambiguity. We included two companies, Boeing and Google, where we did not find any lawsuit, investigation, or settlement because both companies indicated in their Annual Reports that they were subject to regular government investigation, because they had filed *amicus* briefs, and because we felt that the high number of past cases was a reasonable predictor of involvement with DOJ in the near future.

Finally, most DOJ investigations are not publicly disclosed. Consequently, we relied on press reports of investigations. If an investigation had been reported in the last two years, we included it. In those cases, we attempted to find out if the investigation had been closed.

#### Category 2. Lobbying Firms

We looked for lobbying filings by law firms or other organizations that had donated to Senator Sessions to determine if they fit into this category.

#### Category 3. Trade Associations

We considered multiple factors in determining whether a trade association had a relevant matter before DOJ: if the trade association had many members or a particularly large member that was being sued or investigated by DOJ; whether its members had often been sued by DOJ in the past; if the trade association had filed *amicus* briefs regarding DOJ actions; and if the trade association had filed comments on DOJ rule-makings.

#### Category 4. Government Contractors

We included companies that had contracts with DOJ or that had very recent contracts and indicated the intent to continue seeking such contracts.

Overall, when there was an indicator of a matter before DOJ but some uncertainty, we erred on the side of considering it a potential conflict.

## Report Authors

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