January 9, 2017

The Honorable Reginald Jones-Sawyer
Co-Chair, Special Committee on the Office of the Attorney General
State Capitol, Room 4126
Sacramento, CA 95814

The Honorable Mark Stone
Co-Chair, Special Committee on the Office of the Attorney General
State Capitol, Room 3146
Sacramento, CA 95814

Re: Confirmation of Representative Xavier Becerra as Attorney General

Dear Assemblymembers Jones-Sawyer and Stone,

Thank you for the opportunity to comment regarding the Legislature’s confirmation of Representative Xavier Becerra for the position of Attorney General. The American Civil Liberties Union of California does not take a position on appointments to state office, and we take no position on whether Representative Becerra should be confirmed. We nevertheless urge you to explore with Representative Becerra his views on the most critical issues of justice facing our state, and what actions he would take as Attorney General to protect the civil rights and liberties of all Californians. These concerns take on heightened urgency given the unconstitutional campaign promises of the next President\(^1\) and the questionable history on civil rights of his nominee for U.S. Attorney General, Senator Jeff Sessions.\(^2\) We are encouraged by Representative Becerra's remarks on the need to defend the state from the President-elect’s unlawful policy proposals, and we believe it is crucial that Californians are fully informed of how the nominee intends to carry out the role of the state's highest-ranking law enforcement official.

Below are the ACLU of California’s priority issues for the Office of the Attorney General. We appreciate the Committee’s attention to many of these issues in the December 28, 2016 letter to the nominee, and hope the following information will be useful in the confirmation hearing.

**Immigrants’ Rights**

President-elect Trump has pledged to deport millions of people. The ACLU believes that the current

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procedures used to detain and deport immigrants violate the U.S. Constitution’s guarantee of due process, and we are actively challenging those procedures in court, including the failure to provide counsel to children in immigration proceedings and the detention of individuals without an opportunity to post bond. We are deeply concerned that a more aggressive deportation system will violate the Constitutional rights of even more people and tear families apart, with many negative consequences for California’s economy and our communities.

We urge the Attorney General to take immediate steps to protect California from proposals to criminalize, punish, and expel millions of immigrant families, including the following strategies:

- **Support SB 6, AB 3 and SB 54.** These three bills were introduced on the first day of session and represent the most critical reforms California can undertake now to protect immigrant families.
- **Prohibit access by ICE to the deeply flawed CalGang database.** The California State Auditor has determined that CalGang is plagued with errors and unsubstantiated entries. Despite the database's egregious inaccuracies, ICE has been granted broad access to CalGang through the Memorandum of Understanding, which we urge the Attorney General to terminate immediately.
- **Prevent the use of California's fingerprint information for immigration enforcement purposes.** The agreement governing fingerprint sharing between the California DOJ and the FBI suggests that California has control over the dissemination of its fingerprint data, and could specifically limit sharing with immigration authorities while continuing to share fingerprint information with the FBI and other federal agencies.

**Bail Reform**

With nearly two-thirds of California’s jail population detained because they are awaiting trial — most because they simply cannot afford to post bail — there is a critical need to substantially reform the state’s money bail system. The Trump administration may impede efforts to do so by potentially withdrawing or discontinuing the federal DOJ's support of lawsuits challenging money bail, and by worsening federal pretrial policies. We strongly urge the Office of the Attorney General to address the severe injustice of the money bail system by taking the following steps:

- **Support SB 10 (Hertzberg) and AB 42 (Bonta).**
- **Issue an advisory that, as currently administered, the use of money bail in California is unconstitutional.**

**Government Surveillance**

There is an urgent need for increased guidance and oversight of local law enforcement’s use of surveillance technology. As the ACLU of California has documented, the use of surveillance technology in local communities is rapidly proliferating, and basic transparency, accountability, and oversight is the exception, not the rule. We urge the Office of the Attorney General to commit to

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taking the following steps to safeguard the privacy, free speech, and civil rights of Californians.

- **Issue best practices for surveillance technology.** State DOJ should provide clear guidance to law enforcement on the basic mechanisms for public transparency, accountability, and oversight that should be in place before using surveillance technology.\(^5\)
- **Develop and periodically issue a California State of Surveillance report** addressing transparency, accountability, and oversight.
- **Support local surveillance and community safety ordinances.**
- **Support robust state legislation.**

**Police Oversight**

The relationship between law enforcement agencies and the people they are sworn to protect and serve is in crisis. To restore the stability of our communities and improve the integrity of our justice system, policing must be transparent, accountable, equitable, and democratic, and centered on respecting the sanctity of life. The ACLU of California urges the Attorney General to take on several priorities for statewide reform:

- **Continue the Office’s strong commitment to robust implementation of the Racial and Identity Profiling Act (RIPA) of 2015.**
- **Increase transparency of peace officer misconduct and shooting investigations** by supporting state legislation.
- **Reform the CalGang gang database** by implementing the California State Auditor's recommendations.
- **Investigate law enforcement agencies** suspected of a pattern or practice of violating civil rights, as well as individual officer-involved shootings, other use-of-force situations, and in-custody deaths.\(^6\)
- **Establish best practices for law enforcement use of body-worn cameras** to ensure that this technology serves the goals of transparency, accountability, and public trust.

**Prosecutorial Misconduct**

The Chief Judge of the Ninth Circuit Court of Appeal has said that California is facing a “crisis of prosecutorial misconduct.” The federal DOJ recently opened an investigation into the misuse and abuse of informants in Orange County, believed to be the first time the agency has investigated a district attorney’s office. Addressing prosecutorial error and misconduct must be a priority for advancing truth and justice in California, increasing public trust in the criminal justice system, and ensuring that a prison sentence is the last resort for prosecutors who act in bad faith. New systems must be put in place to prevent, correct, and properly sanction prosecutorial error and misconduct. We believe the Attorney General is uniquely positioned to help lead this charge by implementing


\(^6\) The President's Task Force on 21st Century Policing recommends that investigations into individual shootings and in-custody deaths be handled by multi-agency task forces comprised of both state and local investigators, or by state agencies themselves. U.S. Department of Justice, Community Oriented Policing Services (COPS), The President’s Task Force on 21st Century Policing: Final Report 2, 21 (May 2015), [https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf](https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf)
new programs, including:

- **Issue guidance on best practices for gathering, maintaining and disseminating Brady information.**
- **Require improved training** and conduct training audits of offices to determine if they are following procedures.
- **Systematically collect data on prosecutorial error** and make the data available on Open Justice website.
- **Issue guidance on maintaining a healthy separation between prosecution and law enforcement** and avoiding conflicts of interest.

**Reproductive Justice**

California’s Attorney General has historically played an active role in fighting federal threats to reproductive health care access. This role has become crucial to preventing the potentially devastating effects of the Trump administration, given the administration's potential efforts to defund Planned Parenthood, repeal the Affordable Care Act, restructure Medicaid, gut Title IX, and enforce the Weldon Amendment. To protect Californians' access to affordable contraception and abortion services, the Attorney General must:

- **Challenge federal actions that significantly diminish reproductive health access** in California, including any expansion of exemptions for religiously affiliated health care entities.
- **Defend the Department of Managed Health Care (DMHC) rule** that all insurance plans it regulates must provide abortion coverage.
- **Investigate and initiate enforcement actions against crisis pregnancy centers (CPCs) that violate the law.**
- **Provide vigorous oversight over consolidations of hospitals,** and increase oversight role with respect to consolidation of other health facilities.

California urgently needs the leadership of an Attorney General who will steadfastly enforce the Constitution. We look forward to working with the legislature and the Office of the Attorney General to address these pressing issues.

Sincerely,

Natasha Minsker  
Kevin G. Baker  
Director  
Legislative Director  
ACLU of California  
ACLU of California  
Center on Advocacy & Policy  
Center on Advocacy & Policy

cc: Members and Committee Staff, Special Committee on the Office of the Attorney General