BOB GOODLATTE, Virginia
CHAIRMAN

JERROLD NADLER, New York
RANKING MINORITY MEMBER

U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515–6216
One Hundred Fifteenth Congress

November 8, 2018

Chairman Bob Goodlatte
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Goodlatte:

President Donald Trump's decision to force the resignation of Attorney General Jeff Sessions and replace supervision of the Russia investigation with Mark Whitaker places our Nation in the throes of a constitutional crisis. It is therefore critical that our Committee take immediate and forceful actions to safeguard the rule of law and avoid further damage to our constitutional order. These actions should include, among other things, conducting emergency hearings concerning the circumstances surrounding the forced firing; passing bipartisan legislation protecting the Special Counsel; and joining in requesting that the White House, Department of Justice and other relevant agencies and individuals preserve all relevant materials relating to the firing.

The forced firing of Attorney General Sessions appears to be part of an ongoing pattern of behavior by the President seeking to undermine investigation into Russian interference in the 2016 presidential election. These actions include, among other things: (i) attempting to end the FBI's investigation of former National Security Adviser Michael Flynn;[1] (ii) firing FBI Director James Comey because of "this Russia thing;"[2] (iii) distorting the facts in the response to revelations that senior members of the Trump campaign met with Russian operatives at Trump

[1] Michael S. Schmidt, *Comey Memo Says Trump Asked Him to End Flynn Investigation*, N.Y. TIMES, May 16, 2017, *available at* https://www.nytimes.com/2017/05/16/us/politics/james-comey-trump-flynn-russia-investigation.html.

[2] Interview with President Donald Trump, NBC NEWS, May 11, 2009.

Tower prior to the election;[3] (iv) repeatedly threatening to fire Special Counsel Mueller;[4] and (v) recklessly threatening to selectively disclose classified information relating to the investigation.[5]

The November 7th forced firing provides the most dangerous manifestation of this pattern to date. President Trump has long telegraphed his intention to fire both Attorney General Sessions and Deputy Attorney General Rosenstein due to their relationship to the Russia investigation. In March 2017, President Trump asked then White House Counsel Don McGahn to prevent the Attorney General from recusing himself, and when Mr. McGahn was unsuccessful, President Trump "erupted in anger in front of numerous White House officials, saying he needed his Attorney General to protect him."[6] On August 1, 2018, President Trump went so far as to publicly call on the Attorney General to end the Russia investigation, tweeting, "Attorney General Jeff Sessions should stop this Rigged Witch Hunt right now, before it continues to stain our country any further."[7] On the same day, Senator Graham (R-SC), a close advisor and confidant of the President, stated that President Trump would likely fire Attorney General Sessions "sooner rather than later" after the midterm elections.[8] On August 23, 2018, President Trump reiterated that Mr. Sessions "never took control of the Justice Department," and that "he took the job and then he said, 'I'm going to recuse myself.' I said, 'What kind of a man is this?'"

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[3] Jo Becker, et al., *Russian Dirt on Clinton? 'I Love It,' Donald Trump Jr. Said,* N.Y. TIMES, July 11, 2017, *available at* https://www.nytimes.com/2017/07/11/us/politics/trump-russia-email-clinton.html.

[4] In addition to his near constant reference to the Mueller investigation as "witch hunt," President Trump reportedly wanted to fire Mr. Mueller in December 2017 when he grew "furious over news reports about a new round of subpoenas." In addition, he ordered Mr. Mueller to be fired in June 2017, relenting only when White House Counsel, Donald McGahn threatened to resign. See Michael S. Schmidt & Maggie Haberman, *Trump Ordered Mueller Fired, But Backed Off When White House Counsel Threatened to Quit*, N.Y. TIMES, Jan. 25, 2018, *available at* https://www.nytimes.com/2018/01/25/us/politics/trump-mueller-special-counsel-russia.html.

[5] On September 17, 2018, President Trump called for the "immediate declassification" of highly sensitive materials related to Robert Mueller's ongoing investigation, including portions of the FISA order to monitor former Trump campaign adviser Carter Page. On September 21, 2018, President Trump walked back the order, announcing over Twitter that he would ask the DOJ Inspector General to "review these documents on an expedited basis." See Jeremy Herb and Laura Jarrett, *Trump backs away from demand to declassify documents related to Russia investigation,* CNN, Sept. 21, 2018, *available at* https://www.cnn.com/2018/09/21/politics/donald-trump-fisa-declassification-walk-back/index.html. President Trump maintained the threat of reckless declassification, however, tweeting "in the end I can always declassify if it proves necessary." See President Donald Trump (@realDonaldTrump), Twitter, Sept.r 21, 2018, 9:41 AM.

[6] Michael S. Schmidt, *Obstruction Inquiry Shows Trump's Struggle to Keep Grip on Russia Investigation,* N.Y. TIMES, Jan. 4, 2018, *available at* https://www.nytimes.com/2018/01/04/us/politics/trump-sessions-russia-mcgahn.html.

[7] President Doanld Trump (@realDonaldTrump), Twitter, Aug. 1, 2018, *available at* https://twitter.com/realDonaldTrump/status/1024646945640525826.

[8] Lauren Fox, *Lindsey Graham Says Trump Could Replace Sessions After Midterms*, CNN, Aug. 23, 2018, *available at* https://www.cnn.com/2018/08/23/politics/lindsey-graham-jeff-sessions-replace/index.html.

There is little doubt that President Trump's decision to force the firing of Attorney General Rosenstein places Special Counsel Mueller's inquiry at grave risk. As the Acting Attorney General supervising the Special Counsel, Mr. Rosenstein has the sole authority hire and fire the Special Counsel, is responsible for approving the investigation's budget, and has the power to review certain major decisions by the Special Counsel.[9] By forcing the firing of Attorney General Sessions and seeking to replace the supervision of Special Counsel Mueller's investigation with Acting Attorney General Whitaker – who has displayed a well-documented hostility towards the Russian investigation[10] – President Trump has therefore paved the way not only to curtail the investigation, but also to dismiss the Special Counsel.

In light of President Trump's unjustified and constitutionally dangerous forced firing of the Attorney General, we believe the following steps must be immediately taken by the Committee:

- We should hold emergency hearings concerning the circumstances regarding the firing of the Attorney General. At a minimum, Acting Attorney General Whitaker and former Attorney General Sessions need to be called forth to testify on this matter. We would also need to consider which official at the Department currently has responsibility to supervise Special Counsel Mueller's investigation and receive any legal opinion that might permit allowing a non-Senate confirmed individual to supervise this investigation along with any ethics opinion Mr. Whitaker may have received relating to his involvement in this matter.

- We should pass bipartisan legislation, H.R. 5476, the "Special Counsel Independence and Integrity Act," protecting the Special Counsel and his investigation from a politically motivated firing engineered by the President. As you know, every single Democratic Member of the Committee has previously written to you asking that this legislation be taken up and counterpart legislation has already passed the Senate Judiciary Committee.

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[9] 28 CFR §§ 600.1-10.

[10] In July 2017, prior to his appointment as Chief of Staff to the Attorney General, Whitaker stated, "I could see a scenario where Jeff Sessions is replaced with a recess appointment, and that Attorney General doesn't fire Bob Mueller, but he just reduces his budget to so low that his investigation grinds to almost a halt." He continued, "I think what ultimately the President is going to start doing is putting pressure on Rod J. Rosenstein, who is in charge of this investigation, is Acting Attorney General, and really try to get Rod to maybe even cut the budget of Bob Mueller and do something a little more stage crafty than the blunt instrument of firing the Attorney General and trying to replace him." In August, 2017, Whitaker wrote an op-ed entitled, "Mueller's investigation of Trump is going too far," and urged Deputy Attorney General Rosenstein to "limit the scope of this investigation." Furthermore, Whitaker has downplayed the idea that anything illegal occurred at the June 9, 2019 meeting at Trump Tower between Donald Trump Jr. and senior campaign officials with a Russian lawyer offering dirt on Hillary Clinton, stating, "You would always take the meeting." See Aaron Blake, *Trump's Potential New Attorney General Once Mused About a New Attorney General Defunding Mueller,* Wash. Post, Oct. 12, 2018, available at https://www.washingtonpost.com/politics/2018/10/12/trumps-potential-new-attorney-general-once-mused-about-choking-off-robert-muellers-funds/?utm_term=.e9ff11c47638.

- We would ask you to join in requests made in a series of letter to the White House, Justice Department, and other relevant agencies and individuals to preserve and forward to the relevant committees any and all materials relating to the President's decision to force the resignation of Attorney General Sessions.

President Trump's actions have plunged the country into peril, akin to a "slow motion Saturday Night Massacre." President Trump has disregarded and disrespected key democratic institutions—but by forcing the firing the Attorney General, the President now directly threatens the rule of law itself. Democrats and Republicans set aside partisanship to avoid a full-fledged constitutional crisis in the Watergate era. It is therefore necessary that we now set aside our political interests and work together to protect our nation and the rule of law from this grave threat.

We look forward to your prompt response to this letter.

Sincerely,

Jerrold Nadler

Karen Bass

Pramila Jayapal

David N. Cicilline

Jamie Raskin

Hank Johnson

[illegible]

Sheila Jackson Lee

[illegible]

[illegible]

[illegible]

[illegible]

Fred W. Lee

Vail B. Demings

Mark Gerl

[illegible]

[illegible]