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

November 8, 2018

Matthew Whitaker
Acting Attorney General
U.S. Department of Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C.

Dear Acting Attorney General Whitaker:

President Donald Trump's decision to force the resignation of Attorney General Jeff Sessions has placed our Nation in the throes of a potential constitutional crisis. It is therefore critical the Department of Justice take immediate and forceful actions to safeguard the rule of law and avoid further risk to our constitutional order. These actions should include, among other things insuring Deputy Attorney General Rosenstein continue to supervise Special Counsel Mueller's investigation; putting legal protections in place to protect the integrity of the investigation (as was done after the Watergate "Saturday Night Massacre"); and honoring preservation letters relating to these firings.

The forced resignation 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 Tower prior to the election;[3] (iv) repeatedly threatening to fire Special Counsel Mueller;[4] and (v)

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[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.
[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.

recklessly threatening to selectively disclose classified information relating to the investigation.[5]

The forced resignation of Attorney General Sessions provides the most dangerous manifestation of this pattern to date. President Trump has long telegraphed his intention to fire Attorney General Sessions due to his recusal from 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?'"

There is little doubt that President Trump's decision to force the resignation of Attorney General Sessions 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] The forced resignation of Attorney General Sessions may therefore pave the way not only to curtail the investigation, but also to potentially dismiss the Special Counsel.

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[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.

[9] 28 CFR §§ 600.1-10.

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

- As a threshold matter, we would ask that you confirm to us your understanding as to which official at the Department currently has responsibility to supervise Special Counsel Mueller's investigation and provide us with any legal opinion that might permit allowing a non-Senate confirmed individual to supervise this investigation along with any ethics opinion you may have received relating to your involvement in this matter.

- In any event, it is our strongly considered judgement that the Justice Department should allow Deputy Attorney General Rosenstein to continue to supervise this matter. It is clear that any new appointee from outside the Department of Justice would have an immediate conflict of interest, by virtue of his or her selection by an individual (the President) associated with an ongoing criminal investigation.

- It would of course be wholly inappropriate for you to supervise the investigation, given your well-documented statements regarding the efficacy of the Russia investigation, among other legal concerns. In July 2017, prior to you appointment as Chief of Staff to the Attorney General, you 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." You 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, you 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, we understand you have 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."[10]

- The Department of Justice must move to more fully protect the integrity of the Special Counsel's investigation. To do so, the Department should put in place regulations that are at least as stringent as those designed to protect Watergate Special Prosecutor Leon Jaworski, in the wake of the "Saturday Night Massacre" and firing of Special Prosecutor

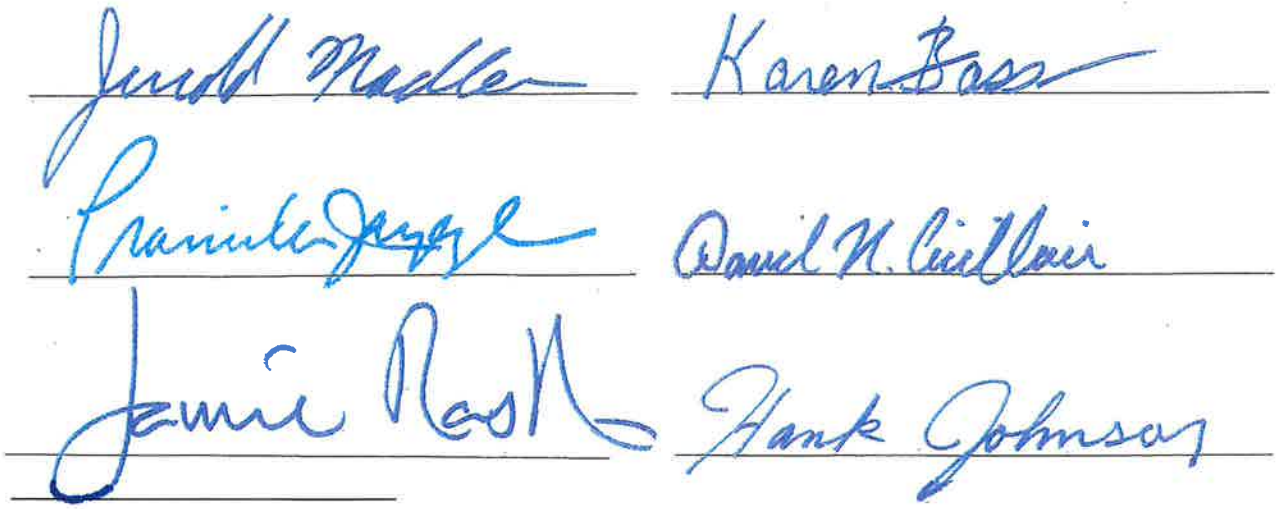
[10] See Aaron Blake, *Trump's Potential New Attorney General Once Mused About a New Attorney General Defunding Mueller,* Wash. Post, Oct. 12, 2018, available at https://www.washingtonpost.com/politics/2018/10/12/trumps-potential-new-attorney-general-once-mused-about-choking-off-robert-muellers-funds/?utm_term=.e9ff11c47638.

Archibald Cox. These protections must include, among other things, requiring that any and all reports prepared by Special Counsel Mueller are made public and insuring that Mr. Mueller will not be terminated absent "extraordinary improprieties."[11]

- As requested in a series of letters sent on November 7, 2018, the Justice Department and others must preserve and forward to the relevant committees any and all materials relating to the President's decision to force the resignation of the Attorney General. In addition, the Special Counsel's Office should ensure that all documents relating to their investigation are preserved.

President Trump's actions risk plunging the country into peril, akin to a "slow motion Saturday Night Massacre." Congress and the Justice Department worked together at that time to avoid a full-fledged constitutional crisis in the Watergate era. It is therefore incumbent that we now set aside any institutional differences we may have and work together to protect our Nation and the rule of law from this grave threat.

Sincerely,



[11] Among other things, these safeguards included protections that (1) the Attorney General will not remove the Special Prosecutor from his duties except for extraordinary improprieties on his part; (2) the Attorney General will not limit the jurisdiction of the Special Prosecutor without first consulting with the bipartisan leaders of the House and Senate; (3) the Special Prosecutor shall not be subject to the day-to-day supervision of any official of the Department, the Attorney General shall not countermand or interfere with the Special Counsel's decisions or actions; (4) the investigation by the Special Prosecutor shall continue until he determines that the investigation and all prosecutions and other proceedings within the scope of his Jurisdiction have been completed or, in his discretion, have been assigned to other personnel in the Department; (5) the Special Prosecutor may from time to time make public such statements or reports as he or she deems appropriate and shall upon completion of his assignment submit a final report to the appropriate persons or entities of the Congress and may make such report public; and (6) the Special Prosecutor shall be provided all appropriate resources by the Department of Justice, including such funds and facilities to carry out his responsibilities as he may reasonably require. 38 Fed. Reg. 32773 (November 28, 1973), p. 30739. See Anthony Ripley, *Jaworski Assumes Office; Bjork Praises Prosecutor,* N.Y. Times, November 6, 1973.

cc: The Hon. Bob Goodlatte, Chairman, House Committee on the Judiciary
Pat Cipollone, White House Counsel