



March 3, 2017

The Honorable Dana Boente  
Acting Deputy Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, D.C. 20530

Dear Deputy Attorney General Boente:

Yesterday, Attorney General Sessions recused himself from the ongoing Department of Justice investigation relating to Russian involvement in the 2016 presidential election and said that you “shall act as and perform the functions of the Attorney General with respect to any matter” relating to the Russia investigation.

In letters to the Justice Department’s Office of Professional Responsibility on [February 27](#) and [March 2, 2017](#), we documented that Department regulations required Attorney General Sessions to recuse himself from all matters dealing with the ongoing Russia investigation.

The matters that Sessions’ recusal must cover include i) any interactions between President Donald Trump, his campaign staff or other individuals supporting his campaign, and Russian actors during Trump’s 2016 presidential campaign, (ii) any Russian interference with the 2016 presidential election, (iii) the interactions between former National Security Adviser Michael Flynn and Russian actors, (iv) the interactions between Attorney General Sessions and the Russian Ambassador to the United States, and (v) any leaks concerning any of these matters.

According to published reports [in \*The Washington Post\*](#), Attorney General Sessions met twice with the Russian Ambassador during the period of the 2016 presidential campaign. These meetings contradicted testimony Sessions gave before the Senate Judiciary Committee during his confirmation hearings. In his testimony, Sessions said that, “I did not have communications with the Russians,” during the 2016 presidential campaign.

After publication of the reports in the *Post*, Attorney General Sessions confirmed that the meetings took place. The fact that Sessions met with the Russian Ambassador to the United States during the 2016 campaign means that Sessions himself is a potential subject of the FBI investigation currently taking place.

Under these circumstances, neither you, serving as both Acting Deputy Attorney General and Acting Attorney General in this matter, nor your successor as Deputy Attorney General once

that nominee is confirmed, nor any other official in the Justice Department, can credibly conduct and lead an investigation of this matter. The matter now includes a potential investigation of Attorney General Sessions who otherwise continues to head the Justice Department and who you and all other employees continue to work for on other matters.

Furthermore, the scope of this investigation potentially also involves President Trump, his presidential campaign staff, other individuals who supported Trump in the presidential campaign, and individuals who worked on his transition or who are working in the White House.

It “would present a conflict of interest” for political appointees of President Trump serving in the Justice Department, or those who work for them, to be involved in an investigation of this scope.

Therefore, Democracy 21 calls on you to exercise the authority provided under Justice Department regulations to appoint an independent Special Counsel to assume authority over and lead the Russia investigation and related matters.

Justice Department regulations, and the need for a publicly credible investigation of Russia’s interference in the 2016 presidential election and related matters, require you to appoint an independent Special Counsel to conduct and lead this investigation. The independent Special Counsel should be authorized to investigate the matters set forth above.

Justice Department regulations state that the Attorney General, “or in cases in which the Attorney General is recused, the Acting Attorney General”:

will appoint a Special Counsel when he or she determines that a criminal investigation of a person or matter is warranted and—

(a) That investigation or prosecution of that person or matter by a United States Attorney’s Office or litigating Division of the Department of Justice would present a conflict of interest for the Department or other extraordinary circumstances; and

(b) That under the circumstances, it would be in the public interest to appoint an outside Special Counsel to assume responsibility for this matter.

28 C.F.R. § 600.1 (emphasis added).

The explanation of this regulation at the time it was promulgated in 1999 states that it is intended to provide for the appointment of a Special Counsel “when the Attorney General concludes that extraordinary circumstances exist such that the public interest would be served by removing a large degree of responsibility for the matter from the Department of Justice.” 64 Fed. Reg. 37038 (July 9, 1999).

This standard is clearly met here.

To put it in the terms of the Justice Department regulation, it would constitute “extraordinary circumstances” for officials of the Justice Department to conduct and lead an investigation and determine any appropriate action to be taken regarding the Attorney General for whom they work.

It also “would present a conflict of interest” for Justice Department officials to conduct and lead an investigation and determine appropriate action to be taken regarding the individuals and matters involved in this case.

In the context of the regulations, it “would be in the public interest to appoint an outside Special Counsel” to assume responsibility for these matters. The language of the regulation states that an independent Special Counsel “will” be appointed in circumstances such as those involved here and thus requires you to appoint an independent Special Counsel.

The regulations authorize an independent Special Counsel to “exercise, within the scope of his or her jurisdiction, the full power and independent authority to exercise all investigative and prosecutorial functions of any United States Attorney.” *Id.* at § 600.6. As explained in the document promulgating the regulations:

The Special Counsel would be free to structure the investigation as he or she wishes and to exercise independent prosecutorial discretion to decide whether charges should be brought, within the context of established procedures of the Department.

64 Fed. Reg. 37038.

The integrity and credibility of the Justice Department is at stake in these matters.

The Justice Department regulations, 28 U.S.C. § 600.1, require that you appoint an independent Special Counsel to conduct and lead the investigation of the matters described above and to make determinations regarding any actions that should be taken here.

Democracy 21 urges you to promptly appoint an independent Special Counsel for these matters.

Sincerely,

/s/ Fred Wertheimer

Fred Wertheimer  
President