

May 12, 2017

Hon. Rod J. Rosenstein
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Deputy Attorney General Rosenstein:

Democracy 21 is calling on you to ensure that Attorney General Sessions has no further involvement in the selection of an interim or permanent Director of the FBI.

This is required by the Attorney General's own recusal commitment and by the applicable Department of Justice recusal regulation, both of which require the Attorney General to recuse himself from any matter that involves the ongoing FBI investigation of alleged Russian interference in the 2016 election and possible collusion by the Trump campaign with that interference.

In a letter sent on May 10, 2017, Democracy 21 joined with 23 other organizations and individuals with government accountability expertise to call on you to promptly appoint an independent Special Counsel, as authorized by Justice Department regulations, to oversee the Russia investigation for the Justice Department. That letter stated:

The integrity and credibility of the Justice Department are at stake here. In the wake of yesterday's extraordinary firing of the FBI Director, you need to act immediately to restore public confidence in the Justice Department and in its investigation of Russian interference in the 2016 election by appointing an independent Special Counsel to lead that investigation.

Until a Special Counsel is named to head the Russia investigation, however, you remain the senior Justice Department official overseeing this investigation and the official at the Department responsible for seeking a new interim or permanent head of the FBI. This is because the selection of an interim or permanent FBI Director falls squarely within the scope of the Attorney General's recusal commitment and the Justice Department's recusal regulation.

We are enclosing a complaint against Attorney General Sessions that we filed today with the Department's Office of Professional Responsibility, stating our view that the Attorney General's direct involvement in the firing of FBI Director James Comey violated the Attorney

General's commitment to recuse himself "from any matters arising from the campaigns for President of the United States."¹

The Attorney General's involvement in the firing of Director Comey also violated the Department's recusal regulation for the reasons set forth in the enclosed complaint.

The recusal regulation requires that any Justice Department employee "shall not participate" in a criminal investigation if he has a "political relationship" with any person or organization "substantially involved" in the conduct under investigation, or if he or any person or organization he knows "has a specific or substantial interest" that would be "directly affected" by the outcome of the investigation. 28 C.F.R. §45.2(a).

These prohibitions apply to the Attorney General with regard to the Russia investigation, in light of the Attorney General's close ties to the Trump presidential campaign, his role as a leading surrogate for the campaign, and the possibility of his being a subject of the investigation, given his own contacts with the Russian ambassador during the presidential campaign.

For these same reasons and because of his recusal commitment, Attorney General Sessions should not play any role at all in the selection of a new interim or permanent FBI Director, who will be charged with leading the Russia investigation.

The selection of a new interim or permanent FBI Director who will assume leadership of the Russia investigation unquestionably is a matter that relates to the Russia investigation and therefore is covered by the same recusal obligations that apply to the conduct of the Russia investigation.

As the senior Department official in charge of the Russia investigation, your actions in the coming days with regard to the conduct of that investigation, the appointment of an independent Special Counsel and the selection of a new FBI Director will play a crucial role in restoring public faith in the Justice Department.

We urge you to appoint a Special Counsel to oversee the Russia investigation and to take the steps necessary to ensure that Attorney General Sessions, consistent with his recusal commitment and with the applicable Department recusal requirement, does not play any role in selecting a new interim or permanent Director of the FBI.

Sincerely,

/s/ Fred Wertheimer

Fred Wertheimer
President

Enclosure

¹ Department of Justice Office of Public Affairs, "Attorney General Statement on Recusal" (March 2, 2017).