



May 12, 2017

The Honorable Jeff Sessions
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RE: Do Not Replace Acting FBI Director Andrew McCabe as Head of the Investigation of Alleged Russian Interference in the U.S. Presidential Election and Alleged Collusion Between Russia and the Trump Campaign

Dear Attorney General Sessions and Deputy Attorney General Rosenstein:

The American Civil Liberties Union strongly urges you to commit publicly that Acting Director of the Federal Bureau of Investigation Andrew McCabe will either continue to direct the FBI, or will otherwise retain all the powers of the director for the investigation of alleged interference by Russia and its agents in the 2016 U.S. presidential election and the alleged collusion between Russia and its agents and the Trump campaign—at least until the end of the investigation and any related prosecutions. If any other person is named as Interim Director or nominated as Director, you should require that person to recuse himself or herself from the investigation, and cede the director's authority to Mr. McCabe for the Russia/Trump investigation.

The disturbing acts this week in removing James Comey as FBI Director as the Russia/Trump FBI investigation was reportedly ramping up raise significant concerns about whether either of you, as Attorney General and Deputy Attorney General, or President Donald Trump can replace Mr. McCabe in his role as directing the investigation, without causing at least the appearance of interference with an investigation that now may include the President and both of you, particularly if expanded to include obstruction of justice. The only option to avoid further damage to the rule

of law is to leave Mr. McCabe in place, either as Interim Director or as director for purposes of the Russia/Trump investigation, until the investigation and any prosecutions are complete.

We are alarmed by reports that both of you, along with White House officials, are interviewing candidates to replace Mr. McCabe and fill the position of Interim FBI Director or be nominated for FBI Director, without providing any assurance that there will be no disruption of the ongoing Russia/Trump investigation. These reports describe interviews as taking place this week, and a replacement being named soon. Although retaining Mr. McCabe is mentioned as a possibility, numerous media outlets are reporting on a concerted effort to remove Mr. McCabe. The ACLU urges you to ensure that either Mr. McCabe continues to direct the FBI, or retains all of the director's authority to direct the Russia/Trump investigation, and any future director be recused from the Russia/Trump investigation. Without such assurances, even the interview process could have a chilling effect on the criminal investigation, particularly because some of the officials reportedly conducting interviews may now themselves be subject to at least being questioned in any full investigation.

The events of the past week are without precedent, except perhaps by comparison with the Saturday Night Massacre carried out by President Richard Nixon, in his interference with a criminal investigation related to his presidential campaign and presidency. While the description of the chronology of events that led to President Trump firing Mr. Comey seems to change with each statement by the President or White House officials, both of you had critical roles in meeting with the President on the fate of Mr. Comey and writing documents that, at least initially, were cited by the President as the basis for the termination of the FBI Director. In a direct statement by the President yesterday, he now claims that he was ready to fire Mr. Comey regardless of your recommendations, and admits that "the Russia thing" was on his mind as he decided to fire Mr. Comey. These statements, and the events leading up to the firing of Mr. Comey, raise serious questions related to obstruction of justice and would fit within the scope of a full criminal investigation related to the Russia/Trump campaign allegations.

The President should not replace Mr. McCabe as head of the investigation until the investigation and any prosecutions are over. The President's own description yesterday of a dinner he hosted at the White House for Mr. Comey—which the President described as related to whether the President would allow Mr. Comey to continue in his job—is that they discussed the criminal investigation, and specifically whether the President was being investigated, during what was essentially a job interview. This conversation, as reported by the President himself, was clearly inappropriate, if not also criminal. The President and his advisors cannot choose the person to lead the investigation of his campaign and presidency.

The ACLU is also concerned about either of you having any role in replacing Mr. McCabe in directing the FBI active investigation of this matter, including during any prosecution. As Attorney General, Mr. Sessions, you recused yourself from any role in

the Russia/Trump campaign investigation, yet were a critical advisor to the President in terminating the head of the very investigation from which you recused yourself. As Deputy Attorney General, Mr. Rosenstein, you met with the President on the termination of Mr. Comey and wrote the memorandum that was initially used as the pretext for terminating Mr. Comey. Neither of you should have any role in removing Mr. McCabe from his role in directing the criminal investigation. If anyone other than Mr. McCabe is selected to direct the FBI, that person should be required to recuse himself or herself from the investigation, and turn over to Mr. McCabe all powers of the director, for purposes of that investigation.

The events of the past week have caused tremendous damage to the rule of law, and shaken the confidence of millions of Americans in the most fundamental tenets of our democracy and in the protections afforded by our constitutional system of checks and balances and laws against political interference in criminal investigations. Removing Mr. McCabe from his role of directing the FBI and overseeing the criminal investigation related to the President's own campaign, or making any other changes to the leadership of the FBI that would affect the investigation, would rock the very foundation of our trust in our nation's adherence to the rule of law. We strongly urge you to leave Mr. McCabe and his leadership team in place on this criminal investigation, at least until the investigation and any prosecutions are complete.

Thank you for your attention to this matter, and we look forward to your response. Please let us know if you have any questions regarding this matter.

Sincerely,



Faiz Shakir
National Political Director



Christopher Anders
Deputy Director