



July 27, 2017

Re: Congress Must Block President Trump from Replacing the Attorney General Without the Advice and Consent of the Senate, By Not Formally Recessing During August

Dear Senator:

The American Civil Liberties Union strongly urges you to oppose formally recessing—having any recess of the annual session—during August, because it would permit President Trump to both fire Attorney General Jeff Sessions and use his recess appointment powers to install a new attorney general, without first obtaining the advice and consent of the Senate. Instead, Congress should calendar regular *pro forma* sessions every three days to ensure that a recess appointment cannot be used to interfere with the ongoing investigation led by Special Counsel Robert Mueller.

The ACLU has never supported or opposed the recess appointment of any public official, and also has never supported or opposed the use of *pro forma* sessions to block a recess appointment. Past presidents and past congresses have made strategic use of their respective appointment authority and scheduling prerogatives to either facilitate or block recess appointments of public officials, with presidents claiming urgent needs to appoint officials and the Senate asserting its constitutional role of advice and consent on nominees.

However, the ACLU strongly urges the use of regular *pro forma* sessions every three days because the President has repeatedly made public comments, including through his Twitter account, that appear to threaten the removal of Mr. Sessions because Mr. Sessions recused himself from the investigation into Russian interference in the presidential election and alleged collusion between Russia and the Trump campaign. Those complaints are increasing in both frequency and stridency, and seem aimed to undermine efforts by Mr. Sessions, Deputy Attorney General Rod Rosenstein, Special Counsel Mueller, and Acting FBI Director Andrew McCabe to try to insulate the investigation from political interference from the White House, including interference by the President whose campaign and associates—and perhaps the President himself—appear to be under criminal investigation.

The ACLU intensely disagrees with many of the policy and litigation decisions that Mr. Sessions has made as attorney general. These decisions are causing severe harm to the civil rights and civil liberties protections

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afforded to all persons. At the same time, any effort to fire, or otherwise force out, Mr. Sessions as a way to try to influence the ongoing criminal investigation by Special Counsel Mueller would not only be wrong, but could itself be unlawful.

The Senate is on notice that there has been considerable reporting and speculation on the possibility that the President could fire, or force out, Mr. Sessions during August and install a new attorney general by recess appointment, if the Senate formally recesses for August. A recess appointment would cut out the Senate's role of advice and consent, including obtaining assurances, similar to the assurances provided to the Senate by Christopher Wray as the nominee for FBI Director, that the next attorney general will not interfere with, or attempt to influence, the investigation by Special Counsel Mueller. Without such assurances to the Senate, an important check on misconduct and political interference in an ongoing criminal investigation will be lost. The Senate has an obligation to the rule of law—including that no person can be above the law—and must ensure that this possible maneuver to affect an ongoing investigation will be unavailable to the President.

For these reasons, the ACLU strongly urges you to oppose formally recessing Congress, and leaving the President an opportunity to try to wrongly, and potentially unlawfully, influence the investigation by Special Counsel Mueller. Please do not hesitate to contact us with any questions about this matter.

Sincerely,



Faiz Shakir
National Political Director



Christopher Anders
Deputy Director