

# United States Senate

WASHINGTON, DC 20510

November 9, 2018

President Donald J. Trump  
The White House  
1600 Pennsylvania Ave NW  
Washington, DC 20500

Dear Mr. President:

Your decision this week to dismiss Attorney General Jeff Sessions and name a Justice Department staff member, Mr. Matthew Whitaker, as Acting Attorney General raises a number of questions regarding the propriety and even the constitutionality of that action. I am writing to request answers to questions about the motivations behind this appointment and your authority to make it.

The statutory line of succession within the Department of Justice provides that the Deputy Attorney General serves as Acting Attorney General in the case of a vacancy in the Office of Attorney General. Yet, without offering any explanation to Congress or the public, you ignored the statutory line of succession and chose to rely on the Vacancies Reform Act (VRA) in order to name Mr. Whitaker.

Mr. Whitaker is a political appointee who is not serving in a Senate confirmed position in the Justice Department. I am not aware of any precedent for appointment of an official who has not been confirmed by the Senate to serve as Acting Attorney General. While an Acting Attorney General was appointed under the VRA in 2007, the official in that instance – Assistant Attorney General Peter D. Keisler – was already serving in a Senate-confirmed position in the Department.

Given that Deputy Attorney General Rod Rosenstein has been confirmed by the Senate and is next in the line of succession established by law, I see no legitimate reason for you to have taken the unprecedented step of naming Mr. Whitaker instead. As an unconfirmed political appointee, Mr. Whitaker has not been subject to the scrutiny that the Constitution requires to ensure that he has the character, integrity and ability to fulfill the grave responsibilities of this job. These concerns are heightened by specific expressions of bias against the Special Counsel investigation that Mr. Whitaker made just last year.

The appointment of Mr. Whitaker is further clouded by unresolved constitutional questions about the legality of such an action. The Appointments Clause of the Constitution requires all principal officers of the government to be nominated by the President by and with the advice and consent of the Senate. The Framers included this provision to ensure no one person can fill every principal office in the government.

The Attorney General, as head of the Department of Justice, is unquestionably a principal officer. It is not clear to me how your appointment of an unconfirmed official as Acting Attorney General comports with this constitutional mandate – either on its face or intent. I therefore ask that you please provide written answers to the following questions:

1. What were the specific reasons behind your decision to disregard the Justice Department's statutory line of succession and bypass Deputy Attorney General Rosenstein in order to install Mr. Whitaker as Acting Attorney General?
2. Did you discuss this decision with any other Administration officials or any individuals outside the Administration? If so, please provide the names of any such officials or individuals.
3. Did you seek advice from the Justice Department Office of Legal Counsel regarding your authority to make this appointment? If so, please provide a copy of any such advice. If not, why not?
4. Did you have any discussions with Mr. Whitaker regarding the Special Counsel investigation prior to this week's appointment?
5. Did you ask or receive from Mr. Whitaker a pledge of loyalty to you?

I hope you agree with me that the integrity and independence of any person serving in the position of Attorney General of the United States is of the utmost importance. I therefore urge you to provide answers to these urgent questions as soon as possible.

Sincerely,



Charles E. Schumer  
United States Senator