

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

Dear Deputy Attorney General,

We write to express our support for the work of Special Counsel Robert S. Mueller III, and to urge you to ensure that he be allowed to continue his investigation – unfettered by political influence or threats to his authority – to its natural and appropriate conclusion based on the law, the facts, and the evidence.

The Special Counsel is Conducting a Methodical Investigation, Yielding Results

It is unimaginable that Republicans would seek to intervene, discredit, obstruct, or terminate the Special Counsel’s investigation. Thus far, from every public indication, it appears that Mr. Mueller is conducting a thorough and methodical investigation. He and his investigators have not sought, and instead avoided, the public spotlight. His team has not leaked, or hinted at, criminal allegations for which they have yet to develop charges. Furthermore, the charges that have been filed to date have been sufficiently strong, and well founded, as to elicit guilty pleas from President Donald Trump’s former National Security Advisor, Lieutenant General Michael Flynn, and a former foreign policy adviser to Donald Trump’s presidential campaign, George Papadopoulos.¹

The Appointment of a Special Counsel was Necessary and Proper

As you know, pursuant to U.S. Department of Justice Order Number 3915-2017, which you issued on May 17, 2017, Mr. Mueller was appointed to serve as Special Counsel and authorized to conduct an investigation into matters “including: (i) any links and/or coordination between the Russian government and individuals associated with the campaign of President Donald Trump; and (ii) any matters that arose or may arise directly from the investigation; and (iii) any other matters within the scope of 28 C.F.R. § 600.4(a),”² which includes “authority to investigate and prosecute federal crimes committed in the course of, and with intent to interfere with, the Special Counsel’s investigation, such as perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses.”³

¹Statement of the Office, U.S. v. George Papadopoulos, Case 1:17-cr-00182-RDM (Oct. 5, 2017) (online at <https://www.justice.gov/file/1007346/download>); Statement of the Offense, U.S. v. Michael T. Flynn, Case 1:17-cr-00232-RC (Dec. 1, 2017) (online at <https://www.justice.gov/file/1015126/download>).

² U.S. Department of Justice, Order Number 3915-2017 (May 17, 2017) (online at <https://www.justice.gov/opa/press-release/file/967231/download>).

³ 28 C.F.R. § 600.4(a) (online at <https://www.law.cornell.edu/cfr/text/28/600.4>).

Your decision to appoint a Special Counsel to conduct such investigation was necessary and proper given: (1) the U.S. Intelligence Community’s assessment that “Russian President Vladimir Putin ordered an influence campaign in 2016 aimed at the US presidential election, the consistent goals of which were to undermine public faith in the US democratic process” and that “Putin and the Russian Government developed a clear preference for [President] Trump;”⁴ (2) the obvious potential that individuals, who had served on President Donald J. Trump’s campaign, as well as individuals currently serving as political appointees in the Trump administration, could be targets of, or witnesses in, any such investigation; and (3) Attorney General Jeff Sessions’ recusal from “any matters related in any way to the campaigns for President of the United States.”⁵

The Selection of Robert S. Mueller III to Serve as Special Counsel was Appropriate

Under the circumstances described above, your selection of Robert Mueller to serve as the Special Counsel to conduct the investigation was an appropriate and commendable decision. Mr. Mueller has earned a reputation as a non-partisan professional investigator, making him an ideal choice to lead the investigation into the highly important, complex, and sensitive matters to which he has been charged. Mr. Mueller’s record demonstrates that he would not allow bias, influence, or other extraneous considerations to impact his investigation, and any suggestion otherwise is not credible.

Mr. Mueller is a former Director of the Federal Bureau of Investigation (FBI), who was originally appointed by a Republican President. He was vetted and, twice, unanimously confirmed by the Senate. Specifically, when appointed in 2001 by President George W. Bush, Mueller was confirmed as FBI Director by a vote of 98 to 0 in the Senate,⁶ and when Mueller was nominated for a second term, in 2011, during President Barack Obama’s administration, he was again unanimously confirmed in the Senate by a vote of 100 to 0.

Mr. Mueller has earned bipartisan support. Republican members of the Senate attested to Mr. Mueller’s integrity and professionalism during Mr. Mueller’s confirmation hearings, which took place on July 30 and 31, 2001. For example, with regard to Mr. Mueller’s nomination to serve as FBI director, then Senator, now Attorney General, Jeff Sessions stated:

“[I]t is great to see Mr. Mueller, nominated to take one of the most important positions in our country. It is a position that requires, in my view, serious experience, great integrity,

⁴ Office of the Director of National Intelligence, *Background to “Assessing Russian Activities and Intentions in Recent US Elections”*: *The Analytic Process and Cyber Incident Attribution* (Jan. 6 2017).

(<https://assets.documentcloud.org/documents/3254235/ICreport010616.pdf>).

⁵ U.S. Department of Justice, *Attorney General Sessions Statement on Recusal* (Mar. 2, 2017) (online at <https://assets.documentcloud.org/documents/3480076/Read-the-full-DOJ-statement-on-the-recusal-of.pdf>).

⁶ Congressional Research Service, *FBI Director: Appointment and Tenure* (Feb. 19 2014) (online at <https://fas.org/sgp/crs/misc/R41850.pdf>).

and a proven record of accomplishment. And you have all of those things, [Robert Mueller]. When I was in the Department of Justice, ... [Robert] Mueller's reputation was known throughout the Department of Justice, and he was known not for any political reason, but because he was recognized as a professional's professional, a man whose skill at doing the job assigned to him was second to none...., there is no doubt in my mind, that there is no more professional prosecutor, no more professional person in America with experience in the Department of Justice, ready to handle the job of FBI Director than [Robert] Mueller.”⁷

Likewise, Senator Mitch McConnell stated:

“I believe Mr. Mueller will provide strong and effective leadership. Mr. Mueller has both impressive management and law enforcement experience. ... [H]e is well-schooled in avoiding the problems and pitfalls inherent in criminal investigations and prosecutions. ...Mr. Mueller is not ‘of’ the FBI, and therefore I believe institutional loyalty will not blind him to making the hard decisions when he needs to.”⁸

Senator McConnell also expressed his belief in Mr. Mueller's commitment “to vigorously enforcing the law without regard to politics or partisanship.”⁹

Speaker of the House Paul Ryan has also commented on Mr. Mueller's lack of partisan bias. As reported in a July 24, 2017 *Washington Examiner* article, Speaker Ryan stated:

“I don't think many people are saying [Robert] Mueller is a biased partisan. He's really, sort of, anything but.”¹⁰

On October 11, 2017, Kenneth Starr, who was appointed in 1994 as the independent counsel who was tasked with investigations involving President Bill Clinton and then First Lady Hillary Clinton, commented on Robert Mueller and the manner in which his investigation is

⁷ U.S. Senate Committee on the Judiciary, Confirmation Hearing on the Nomination of Robert S. Mueller, III to be Director of the Federal Bureau of Investigation (July 30 and 31, 2001) (online at <https://www.congress.gov/107/chrg/shrg80335/CHRG-107shrg80335.htm>).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Paul Ryan to Trump: Robert Mueller is 'anything but' a partisan*, *Washington Examiner* (July 24, 2017) (online at <https://www.washingtonexaminer.com/paul-ryan-tells-trump-robert-mueller-is-anything-but-a-partisan/article/2629477>).

proceeding.¹¹ Mr. Starr stated that Mr. Mueller is conducting his investigation “aggressively and professionally.”¹² Mr. Starr also stated:

“We’re not seeing ‘leaks’ out of the investigation as far as we know, and what we know of Bob Mueller and his background is that he is someone of total, rock-ribbed integrity.”¹³

Regulations Limiting the Removal of a Special Counsel Must Be Followed

Mr. Mueller must be allowed to complete his investigation, and should not be threatened with removal. However, a few Republicans have indicated their support for Mr. Mueller’s ouster. Notwithstanding the overwhelming reasons for Mr. Mueller to be allowed to continue and complete his investigation, the rule of law demands that the Trump administration follow Executive Branch regulations, which restrict the circumstances under which a special counsel can be removed. Specifically, 28 CFR § 600.7(d) regarding the removal or discipline of a special counsel provides:

“The Special Counsel may be disciplined or removed from office only by the personal action of the Attorney General. The Attorney General may remove a Special Counsel for misconduct, dereliction of duty, incapacity, conflict of interest, or for other good cause, including violation of Departmental policies. The Attorney General shall inform the Special Counsel in writing of the specific reason for his or her removal.”

Since Attorney General Sessions is recused, you, in your capacity as acting Attorney General regarding Special Counsel Mueller’s investigation, are the only individual empowered to remove Mr. Mueller under regulation. Furthermore, the regulation clearly states that Mr. Mueller may only be removed for good cause, which has not been demonstrated. The administration is required to follow its own regulations and not remove Mr. Mueller from his investigation.

Politically Motivated Challenges of Special Counsel Mueller and His Investigation Must Not Be Allowed to Threaten the Investigation

Despite Special Counsel Mueller’s record of integrity, as attested to by these Republican leaders, and despite the clear progress that Mr. Mueller is making in his investigation, the right-wing media, some Republican Members of Congress and Donald Trump, himself, have attempted to advance a false narrative that Special Counsel Mueller’s investigation is biased, and

¹¹ Congressional Research Service, *Special Counsels, Independent Counsels, and Special Prosecutors: Options for Independent Executive Investigations* (June 1, 2017) (online at <http://fas.org/sgp/crs/misc/R44857.pdf>).

¹² *Ken Starr praises Mueller’s Trump-Russia probe*, The Hill (October 11, 2017) (online at <http://thehill.com/blogs/blog-briefing-room/news/354868-ken-starr-praises-muellers-trump-russia-probe>).

¹³ *Id.*

some have advocated for Mr. Mueller’s removal. On June 15, 2017, referring in general terms to the Russia investigation, President Trump stated on social media:

“You are witnessing the single greatest WITCH HUNT in American political history — led by some very bad and conflicted people!”¹⁴

In Congress, four Republican Members, led by Rep. Matt Gaetz and including former Rep. Trent Franks, who has now resigned amidst an Ethics Committee investigation into his own conduct, have cosponsored a resolution calling for Mueller to step down. Those members have attempted to advance baseless claims of the existence of a conflict due to Mr. Mueller’s previous service as FBI Director. Those arguments do not have merit, and appear intended, at best, to redirect the public’s focus toward matters that are wholly unrelated to the investigation to which Mr. Mueller has been tasked. At worst, those arguments are intended to stop or preemptively tarnish the perception of the Special Counsel’s work. The issues referenced in that Republican resolution pertain to allegations against former President Bill Clinton and former presidential candidate Hillary Clinton related to a 2009-2010 matter, which has nothing to do with Mr. Mueller’s directive to investigate “links and/or coordination between the Russian government and individuals associated with the campaign of President Donald Trump.”¹⁵

As quoted in a December 12, 2017 *Politico* article, Rep. Matt Gaetz stated that he told President Trump that he was “concerned” that Mr. Mueller’s investigation “was infected with bias.”¹⁶ Rep. Gaetz said the president responded: “That’s why you guys have got to do your job.”¹⁷ Rep. Gaetz further stated that he informed the president that you would be testifying before the House Judiciary Committee on December 13, 2017, in response to which Rep. Gaetz said President Trump “encouraged us to exercise our oversight responsibilities.”¹⁸ This conversation, as described by Rep. Gaetz, suggests that President Trump is encouraging the ring leaders of the recent criticisms against Mr. Mueller in order to pressure you to affect the investigation through the congressional oversight process. That is unacceptable.

Some have alleged that Mr. Mueller’s removal of a member of his team, Peter Strzok, over text messages sent by Mr. Strzok that were critical of President Trump suggests bias or a lack of objectivity on the Special Counsel’s team. However, upon learning of the text messages,

¹⁴ *Trump: 'You are witnessing the single greatest WITCH HUNT in American political history'*, The Hill (June 15, 2017) (online at <http://thehill.com/homenews/administration/337901-trump-you-are-witnessing-the-single-greatest-witch-hunt-in-american>).

¹⁵ U.S. Department of Justice, Order Number 3915-2017 (May 17, 2017) (online at <https://www.justice.gov/opa/press-release/file/967231/download>).

¹⁶ *GOP congressman to Trump: Mueller probe 'infected with bias'*, Politico (Dec. 12, 2017) (online at <https://www.politico.com/story/2017/12/12/matt-gaetz-trump-mueller-russia-investigation-292731>).

¹⁷ *Id.*

¹⁸ *Id.*

Mr. Mueller immediately removed Mr. Strzok from the investigation.¹⁹ In reality, this incident and Mr. Mueller's swift response demonstrates Mr. Mueller's integrity as well as his desire and commitment to conduct an investigation that is beyond reproach.

You must not allow the targets of the investigation, or issues being investigated, to escape thorough independent inquiry through the removal, or hindrance, of the Special Counsel. We thank you for your careful attention to this letter, and we stand ready to support you in upholding the rule of law.

Sincerely,

¹⁹ *FBI agent removed from Mueller investigation over anti-Trump messages*, CNN (Dec. 4, 2017) (online at <http://www.cnn.com/2017/12/02/politics/fbi-agent-removed-trump-investigation/index.html>).