

For Immediate Release: November 9, 2018

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Government Watchdogs Challenge Illegal Appointment of Matthew Whitaker as Attorney General of the United States

WASHINGTON D.C. -- Free Speech For People, a non-partisan legal advocacy organization, issued an urgent request to Deputy Attorney General Rod Rosenstein and U.S. Attorney for the District of Columbia Jessie Liu for quo warranto proceedings against Matthew Whitaker for unlawfully usurping and exercising the office of Attorney General of the United States.

On Wednesday, November 7, 2018, at the request of President Donald J. Trump, the former Attorney General, Jefferson Sessions, submitted his resignation effective immediately. That same day, President Trump purported to appoint Mr. Whitaker as acting Attorney General under the federal Vacancies Reform Act.

The request for quo warranto argues that this appointment was invalid for three reasons. First, Mr. Whitaker's appointment violates the Constitution. Under the Appointments Clause, the president "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law." Mr. Whitaker has not been confirmed by the Senate to any position in government. Second, the Vacancies Reform Act does not apply to an official whose resignation is a sham and who has in actuality been fired. Third, the Vacancies Reform Act does not apply when a more specific statute expressly designates, or authorizes the head of an executive department to designate, an officer in an acting capacity. In the case of the Attorney General, a more specific statute provides that in the vacancy of the Attorney General, the Deputy Attorney General may exercise all the duties of the office.

As Justice Clarence Thomas noted just last year, "the Appointments Clause is not an empty formality" but rather a bulwark against abuse and corruption. Here, there are no emergency circumstances preventing the president from naming a Senate-confirmed official, such as Deputy Attorney General Rosenstein, as acting Attorney General. Instead, the evidence suggests that President Trump fired Attorney General Sessions, and appointed Mr. Whitaker, for the sole purpose of obstructing ongoing criminal investigations currently under the supervision of the Senate-confirmed Deputy Attorney General.

"Mr. Whitaker's appointment to the office of acting Attorney General was illegal and unconstitutional," says Ron Fein, Legal Director for Free Speech For People, "It's imperative that the Deputy Attorney General and U.S. Attorney for the District of Columbia step in to uphold the rule of law."

Read the request for quo warranto [here](#).

Free Speech For People is a non-profit, non-partisan legal advocacy organization that works to renew our democracy and our United States Constitution for we the people, not big money and corporate interests. For more information, visit: www.freespeechforpeople.org.