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June 28, 2017

VIA ELECTRONIC TRANSMISSION

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

Dear Mr. Rosenstein,

On May 2, 2017, I wrote to you regarding Acting Director McCabe's apparent conflicts in ongoing FBI investigations due to, among other things, his relationship with Gov. Terry McAuliffe and asked what steps you have taken to address the appearance of political bias at the FBI. It now appears that Acting Director McCabe is the subject of three separate pending investigations.

First, the Department of Justice Office of Inspector General is examining his failure to recuse himself from the Clinton investigation due to his political relationship with McAuliffe. Second, the Office of Special Counsel (OSC) is investigating allegations that he violated the Hatch Act by engaging in political campaign activities.¹ Third, he is also reportedly the subject of a pending Equal Employment Opportunity (EEO) complaint by a female FBI agent for sex discrimination, who alleges she was targeted for retaliation because of her complaint.² According to new press reports, Lt. Gen. Michael Flynn provided a letter of support for the complainant in that case, which raises serious questions about why Mr. McCabe also failed to recuse himself from investigations involving Mr. Flynn.³ In addition, a recent press report states that three FBI employees, "personally witnessed McCabe make disparaging remarks about Flynn before and during the time the retired Army general emerged as a figure in the Russia case."⁴ That evidence and the failure to recuse calls into question whether Mr. McCabe handled the Flynn investigation fairly and objectively, or whether he had any retaliatory motive against Flynn for being an adverse witness to him in a pending proceeding.

In the May 2 letter, I noted the FBI's failure to respond to the Committee's previous questions. However, to date, you have failed to respond. On December 14, 2016, the FBI provided the ethical and recusal protocol applied to Mr. McCabe regarding his potential conflicts

¹ John Solomon and Sara A. Carter, "The face of FBI politics: Bureau boss McCabe under Hatch Act investigation," Circa (June 27, 2017). <http://circa.com/politics/accountability/fbi-chief-mccabe-key-figure-in-russia-probe-under-investigation-for-possible-hatch-act-v>. OSC is the permanent, independent investigative agency for personnel matters, not Robert Mueller's temporary prosecutorial office within the Justice Department.

² Carrie Johnson, *Former FBI Agent Speaks Out: 'I Was Not Protected'*, NPR (April 15, 2015) <http://www.npr.org/2015/04/15/399853577/former-fbi-agent-speaks-out-i-was-not-protected>

³ John Solomon and Sara Carter, *Did the FBI retaliate against Michael Flynn by launching Russia probe?* Circa (June 26, 2017) <http://circa.com/politics/accountability/did-the-fbi-retaliate-against-michael-flynn-by-launching-russia-probe>

⁴ *Id.*

of interest in ongoing and future FBI investigations. Oddly, Mr. McCabe was the approval authority for his own recusal memo. That document contains a number of redactions. The Committee requires unredacted copies of the document for its inquiry.

Accordingly, please provide an unredacted copy of the attached document no later than July 12, 2017. In addition, please provide a written explanation of the steps you intend to take as Mr. McCabe's supervisor to address the appearance of political and other conflicts of interest outlined above.

I anticipate that your written reply and any responsive documents will be unclassified. Please send all unclassified material directly to the Committee. In keeping with the requirements of Executive Order 13526, if any of the responsive documents do contain classified information, please segregate all unclassified material within the classified documents, provide all unclassified information directly to the Committee, and provide a classified addendum to the Office of Senate Security. Although the Committee complies with all laws and regulations governing the handling of classified information, it is not bound, absent its prior agreement, by any handling restrictions or instructions on unclassified information unilaterally asserted by the Executive Branch.

Thank you in advance for your cooperation with this request. If you have questions, contact Josh Flynn-Brown of my Judiciary Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Chairman
Senate Committee on the Judiciary