

ORAL ARGUMENT REQUESTED

CASE NO. 17-5288

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

FREEDOM WATCH, INC.

Plaintiff-Appellant,

v.

JEFF B. SESSIONS, et al

Defendants-Appellees.

APPEAL FROM AN ORDER
OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PLAINTIFF-APPELLANT'S INITIAL BRIEF

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

A. Parties

Freedom Watch, Inc. is a 501(c)(3) non-profit corporation incorporated under the laws of the District of Columbia. Jeff Sessions is an individual and a Defendant/Appellee being sued in his official capacity on behalf of the U.S. Department of Justice. Michael Horowitz is an individual and a Defendant/Appellee being sued in his official capacity on behalf of the Office of the Inspector General. Robin Ashton is an individual and a Defendant/Appellee being sued in her official capacity on behalf of the Office of Professional Responsibility. Christopher Wray is an individual and a Defendant/Appellee being sued in his official capacity on behalf of the Federal Bureau of Investigation.

B. Rulings

Freedom Watch appeals from the U.S. District Court for the District of Columbia's ("District Court") order dismissing Freedom Watch's action for lack of subject-matter jurisdiction, ECF No. 11, and the District Court's order denying Freedom Watch's Motion to Disqualify the Honorable Amy Berman Jackson, ECF No. 7.

C. Related Cases

This case was not previously before this court or any other court, and Appellants are unaware of any related cases.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure (“FRAP”) 26.1, the Plaintiff-Appellant, Freedom Watch, Inc. (“Freedom Watch”) is a 501(c)(3) corporation incorporated under the laws of the District of Columbia. Freedom Watch is not an officer, director or majority shareholder of any publicly traded corporation.

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JURISDICTIONAL STATEMENT

The basis for the U.S. Court of Appeals for the District of Columbia Circuit's subject-matter jurisdiction is pursuant to 28 U.S.C. § 1291 because this appeal is from a final judgment that disposes of all parties' claims.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Did the District Court err by dismissing Freedom Watch's claims on the grounds that it lacked subject-matter jurisdiction?
2. Did the District Court err by denying Freedom Watch's Motion for Disqualification of the Honorable Amy Berman Jackson?

STATEMENT OF THE CASE

Appellant Freedom Watch, Inc. ("Freedom Watch") brings this appeal seeking an order from this Court ordering the U.S. District Court for the District of Columbia ("District Court") to issue a writ of mandamus pursuant to 28 U.S.C. § 1361 compelling the Appellees to conduct an expedited investigation into the the torrent of leaks surrounding the Special Prosecutor Robert Mueller's ("Mr. Mueller") investigation into Russian interference in the 2016 presidential election ("the Mueller Investigation"). Furthermore, Freedom Watch seeks an order disqualifying the Honorable Amy Berman Jackson ("Judge Jackson"), as she has continuous extrajudicial bias and prejudice against Freedom Watch, as well as its founder and chairman, Mr. Larry Klayman ("Mr. Klayman") and his clients.

I. Facts Pertaining to Leaks in Mueller Investigation

In May 2017, Mr. Mueller was appointed by the U.S. Department of Justice (“USDOJ”) as Special Counsel to conduct along with the FBI a criminal investigation into alleged Russian interference in the 2016 presidential election. Since the inception of the Mueller Investigation, a pattern of a persistent torrent of leaks has emerged, and considering their nature, it is clear that the majority of these leaks are coming from Mr. Mueller and his staff, most of whom are suffering from serious conflicts of interest. The nature as well as the quantity of these leaks make it clear that they are coming from the USDOJ and/or Federal Bureau of Investigation (“FBI”), and Mr. Mueller and his staff, which are technically under the direction and control and authority of USDOJ as well. Indeed, numerous news outlets have been privy to what Mr. Mueller's staff is focused on, their progress, activities, and even what they are thinking – information only known by Mr. Mueller and his staff; thus, it stands to reason that the leaks can only possibly have originated from Mr. Mueller and his staff. Appellant set forth numerous examples of these leaks in its Complaint, including but not limited to:

Federal investigators working for Special Counsel Robert Mueller are keenly focused on President Donald Trump's role in crafting a response to a published article about a meeting between Russians and his son Donald Jr., three sources familiar with the matter told NBC News. The sources told NBC News that prosecutors want to know

what Trump knew about the meeting and whether he sought to conceal its purpose.¹

Special counsel Robert Mueller is examining what role, if any, former national security adviser Mike Flynn may have played in a private effort to obtain Hillary Clinton's emails from Russian hackers, according to people familiar with the matter. The effort to seek out hackers who were believed to have stolen Mrs. Clinton's emails, first reported by The Wall Street Journal, was led by a longtime Republican activist, Peter W. Smith.²

The letter Mueller is reviewing was drafted by Trump along with policy adviser Stephen Miller, and legal experts say it is possibly the most critical piece of evidence in Mueller's obstruction-of-justice case since Comey's testimony before the Senate Intelligence Committee in June, because it can give prosecutors a direct window into Trump's thinking shortly before he fired Comey.³

Russian officials bragged in conversations during the presidential campaign that they had cultivated a strong relationship with former Trump adviser retired Gen. Michael Flynn and believed they could use him to influence Donald Trump and his team, sources told CNN.⁴

¹ Julia Ainsley and Tom Winter, *Mueller Team Asking if Trump Tried to Hide Purpose of Trump Tower Meeting*, NBC News, August 28, 2017, available at: <https://www.nbcnews.com/news/us-news/mueller-team-asking-if-trump-tried-hide-purpose-trump-tower-n796746>

² Shane Harris, *Special Counsel Examines Possible Role Flynn Played in Seeking Clinton Emails From Hackers*, The Wall Street Journal, August 25, 2017, available at: <https://www.wsj.com/articles/special-counsel-examines-possible-role-flynn-played-in-seeking-clinton-emails-from-hackers-1503694304>

³ Sonam Sheth, *Mueller's investigation just got a boost — and another Trump associate may be in its crosshairs*, Business Insider, September 2, 2017, available at: <http://www.businessinsider.com/stephen-miller-trump-letter-comey-firing-obstruction-of-justice-mueller-russia-investigation-2017-9>

⁴ *Sources: Russians bragged about using Flynn*, CNN, undated video of news broadcast, available at: <http://www.cnn.com/videos/politics/2017/05/20/russia->

Incredibly, these just comprise a small sampling of the torrent of leaks coming from Mr. Mueller and his staff. Numerous additional instances were pled by Appellant as well. *See* ECF No. 1-1.

II. Facts Pertaining to Mr. Mueller and his Staff's Conflicts of Interest

Mr. Mueller and his team suffer from numerous conflicts of interest that not only mandate their removal, but also demonstrate the clear political bias that explains why the leaks set forth previously are being disseminated to the media on a daily basis.

For instance, Mr. Mueller's investigation turns on the credibility and personal interests of Mueller's long-term colleague and close friend, former FBI Director James Comey. ("Mr. Comey"). Not only will the investigation impact Mr. Comey, but Mueller must judge his own friend's credibility as a witness. As recently as 2009, then the Director of the FBI, Mr. Mueller personally carried samples of highly-enriched uranium to Moscow, as shown in official diplomatic cables that have been publicly released. While Mr. Mueller's involvement in

transporting uranium samples to the Russian Federation may have been proper,⁵ the task of the Special Counsel is to give public confidence and the appearance of enhanced integrity in the Russian collusion investigation. Compared with the professional permanent staff of the FBI and USDOJ, Mr. Mueller cannot offer public confidence in the investigation having personally worked with Russia on such high level issues. If the evidence shows that Russia intervened in the election in relation to Hillary Clinton's support for the sale of twenty percent (20%) of the uranium mining reserves of the United States to the Russian Federation as the leading member of the inter-governmental decision-making body the Committee on Foreign Investment in the United States (CFIUS), Mr. Mueller and his team would be ethically prohibited from honestly investigating and exploring the truth.

Mr. Mueller knowingly hired an attorney who had previously -- within the last year -- represented the Clinton Foundation of whom Hillary Clinton and Bill Clinton are principals. Attorney Jeannie S. Rhee ("Ms. Rhee"), D.C. Bar No. 464127 was ethically required to decline a position that places her in a conflict of interest as a staff attorney for Mr. Mueller. Having previously represented the

⁵ "(S/NF) Background: Over two years ago Russia requested a ten-gram sample of highly enriched uranium (HEU) seized in early 2006 in Georgia during a nuclear smuggling sting operation involving one Russian national and several Georgian accomplices. The seized HEU was transferred to U.S. custody and is being held at a secure DOE facility. In response to the Russian request, the Georgian Government authorized the United States to share a sample of the material with the Russians for forensic analysis."

Clinton Foundation as an attorney, including its Board of Directors and principals Hillary Clinton, Bill Clinton, Chelsea Clinton, and Former Counselor of the U.S. Department of State Cheryl Mills, Ms. Rhee ethically cannot investigate, work on, or prosecute the topics related to the investigation of collusion by the Russian Federation with the presidential campaign of Donald Trump running against Hillary Clinton. Ms. Rhee's involvement contaminates the entire investigation by Mr. Mueller's office. Indeed, Mr. Mueller's refusal to correct this unethical conduct speaks volumes and loudly proclaims the true nature of Mr. Mueller's intentions and undertakings.

Two other lawyers on Mr. Mueller's team gave the maximum \$2,700 donation to Hillary Clinton in last year's election. Three attorneys on Mr. Mueller's team - Andrew Weissmann, Jeannie Rhee, and James Quarles - alone donated more than \$50,000 to Democrats,⁶ and almost exclusively to Democrats, according to Federal Election Commission campaign finance reports. All told, more than half of Mr. Mueller's massive team of lawyers are influential donors to the Democrat party investigating the presidential campaign of a Republican Donald Trump.

III. Facts Pertaining to Judge Jackson

⁶ Marshall Cohen, *Special counsel team members donated to Dems, FEC records show*, CNN, June 13, 2017, available at: <http://www.cnn.com/2017/06/12/politics/robert-mueller-donations-democrats-fec/index.html>.

Judge Jackson has demonstrated a pattern and practice of extrajudicial bias and animus against Freedom Watch, Mr. Klayman, and his clients that make fair and neutral judgment impossible, as evidenced by the pattern and practice of issuing severely prejudicial rulings against Freedom Watch and Mr. Klayman and his clients. Indeed, Judge Jackson has inherent and manifest political biases and conflicts of interest that mandate her recusal or disqualification. These are evidenced by Federal Election Commission records, which show that Judge Jackson has donated substantial sums to Democrat and leftist politicians (ECF No. 10-1):

- (1) **Obama for America** – 1/25/08 - \$250.00
- (2) **Obama for America** – 2/20/08 - \$1,000.00
- (3) **Obama for America** – 6/19/08 - \$1,000.00
- (4) **Obama for America** – 7/21/08 - \$500.00
- (5) **John Edwards for President** – 9/9/07 - \$250.00
- (6) **John Edwards for President** – 1/25/08 - \$250.00
- (7) **John Kerry for President** – 5/21/04 - \$500.00
- (8) **Friends of John Barrow** – 5/3/04 - \$250.00
- (9) **Alex Sanders for the US Senate** – 4/15/02 - \$500.00

For instance, in this instant matter, Judge Jackson *sua sponte* set an Order to Show Cause why the Court has subject matter jurisdiction over this action, before

any Appellee had even appeared in the matter. The fact that she rushed to issue this order on her own, without even a request from the Defendants, evidences her mindset of having pre-judged this matter from its inception. Not surprisingly, Judge Jackson quickly rushed to dismiss Freedom Watch's claims, without even requiring a response from the Appellees, which is why this matter is now before this Court.

Furthermore, Judge Jackson's rulings in *Smith v. Clinton*, 1:16-cv-01606-ABJ (the "Defamation Case") -in which Mr. Klayman served as counsel for Plaintiffs – clearly her deep-seated favoritism toward Democrat political interests and the concomitant and related protection of Mrs. Clinton that evidence and underscores the political extra-judicial prejudice that will directly influence her rulings in this matter. This Defamation Case involves Plaintiffs Patricia Smith and Charles Woods – the surviving parents of Sean Smith and Tyrone Woods, who were tragically killed by terrorists during the Benghazi attack in 2012 – who brought suit against Mrs. Clinton alleging that her use of a private email server to transmit sensitive, confidential and classified information directly led to the wrongful deaths of their sons. Mrs. Clinton subsequently defamed Plaintiffs in the public eye to cover up her illegal conduct and preserve her chance to win the Presidency. Judge Jackson dismissed Ms. Smith and Mr. Woods's claims on non-meritorious and contrived grounds, and this matter is currently on appeal with this

Court as well. A strong example of her strongly politicized bias was that - in direct response to Mr. Klayman being critical of Mrs. Clinton in a pleading - Judge Jackson issued a minute order on November 23, 2016 essentially gagging Plaintiffs from criticizing Mrs. Clinton, and ordering that “plaintiffs utilize the additional time to review and edit the pleading carefully to ensure that the unnecessarily vituperative and sarcastic tone of the previous pleading is eliminated.” This type of order protecting Mrs. Clinton clearly shows her agenda to protect the political interests of Democrats and Mrs. Clinton at any cost. Furthermore, the timing of her dismissal was also particularly egregious and vindictive. Judge Jackson, who was appointed to the bench by President Barack Obama, chose to dismiss Plaintiffs’ claims on the Friday before Memorial Day – the holiday during which Plaintiffs are grieving in particular over the deaths of their sons and the national holiday to remember the lives and sacrifices of their sons. Mr. Woods is a member of a Gold Star family, as the father of a slain Navy SEAL. Ms. Smith is the mother of a slain former CIA contractor who was doing work for the U.S. Government as a reported CIA undercover agent. The timing of Judge Jackson’s ruling is quite simply, too insensitive to be “coincidental.” The timing of Judge Jackson’s decision was likely calculated to inflict additional emotional distress on Plaintiffs.

Lastly, Judge Jackson suffers from a clear conflict of interest by virtue of the fact that she is the judge assigned to the prosecution of Mr. Manafort, who was

indicted as a direct result of the Mueller Investigation. This, in and of itself, constitutes a clear conflict of interest in the instant matter, which involves the torrent of leaks coming from Mr. Mueller and his staff regarding the Mueller Investigation, since Judge Jackson has personal knowledge of the facts and a clear opportunity and motive to pre-judge the matter, given her clear-cut personal and political biases and preconceptions, as set forth above.

SUMMARY OF THE ARGUMENT

Freedom Watch has sufficiently alleged standing because it has alleged both an injury in fact, as well as associational standing. Freedom Watch's injuries are redressable by the Court because Appellees have a clear, mandatory duty to act, pursuant to their own published rules and procedures.

This case must be remanded for further proceedings to another randomly selected judge because Judge Jackson should have been recused and/or disqualified under 28 U.S.C. § 144 and/or 28 U.S.C. § 455 due to her extrajudicial bias and prejudice against Mr. Klayman and Freedom Watch.

STANDARD OF REVIEW

Whether the District Court properly granted Defendants-Appellees Motion to Dismiss and entered judgment on the pleadings in favor of Defendant-Appellee is a question of law, which this Court reviews *de novo*. *Peters v. National R.R. Passenger Corp.*, 966 F.2d 1483, 1485 (D.C. Cir. 1992). In doing so, this Court

must treat all the factual allegations of the Complaint as true, *see Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 164 (1993) (reviewing de novo the district court's dismissal of claims), and must grant plaintiff[s] "the benefit of all inferences that can be derived from the facts alleged," *Schuler v. United States*, 617 F.2d 605, 608 (D.C. Cir. 1979).

ARGUMENT

I. The District Court Erred When It Found That It Lacked Subject Matter Jurisdiction

Judge Jackson dismissed Freedom Watch's claim because she ruled that Freedom Watch lacked standing necessary to establish subject-matter jurisdiction. ECF No. 12 at 6. Judge Jackson made this determination on the grounds that (1) Freedom Watch did not suffer an injury in fact and (2) the injury alleged by Freedom Watch was not redressable by the District Court. Each of these contentions is erroneous. Alternatively, Freedom Watch has associational standing as well and organizational standing as well.

A. Freedom Watch Suffered an Injury in Fact

Freedom Watch set forth in its Response to the Court's Order of November 27 that it is a "public interest watchdog which investigates and prosecutes government corruption on behalf of the American people and disseminates information to them." ECF No. 10 at 6. "Freedom Watch's mission is to disseminate information to the public in order to further conservative principles,

good government, ethics and respect for the rule of law, individual liberty, and freedom.” *Id.* “Defendants have caused injury to Freedom Watch, as their indifference and inaction toward the illegal leaks and violation of grand jury secrecy directly contravenes and thus harms Freedom Watch’s purpose and mission, which is supported by its members.” *Id.* at 7 (emphasis added). Judge Jackson apparently ignores the last portion in holding that Freedom Watch did not allege a “drain on the organization’s resources.” ECF No. 12 at 4. Indeed, Freedom Watch is entirely reliant on support by its members or supporters in the form of contributions and donations in order to function and carry out its mission, as a non-profit 501(c)(3) corporation. In turn, Appellees’ inaction, which contravene Freedom Watch’s mission, also necessarily cause a corresponding downturn in financial support to Freedom Watch. Furthermore, had Appellees conducted the investigation requested by Freedom Watch, ECF No. 1-1, Freedom Watch would have clearly experienced a substantial increase in financial support due to the attendant increase in positive publicity.

Lastly, to the extent that Judge Jackson dismissal was based on what she deemed to be deficiencies in pleading, she should have given Freedom Watch leave to amend. Indeed, there would have been zero prejudice, given the fact that the Defendants-Appellees had not even appeared in the case. Instead, and as

further compelling evidence of her deep extrajudicial bias and prejudice, Judge Jackson *sua sponte* dismissed the action.

B. Alternatively, Freedom Watch Has Associational Standing

Even in the absence of injury to itself, an association may have standing solely as the representative of its members. *Warth v. Seldin*, 422 U.S. 490, 511 (1975). “An association has standing to bring suit on behalf of its members when (1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation in the lawsuit of each of the individual members.” *Hunt v. Washington State Apple Advert. Comm'n*, 432 U.S. 333 (1977).

For example, the court in *NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449, 458-60 (1958) held that, an association can act on behalf of its members to represent their interests in a suit if the circumstances are appropriate. In that case, the NAACP was previously adjudged in contempt for failing to comply with a court order requiring the production of names of its members. *Id.* at 560. The U.S. Supreme Court allowed the NAACP to represent its members in that action, holding that the “reasonable likelihood that the [NAACP] itself through diminished financial support and membership may be adversely affected if production is [compelled, therefore,] petitioner has standing to complain of the production order

on behalf of its members.” *Id.* at 559. Furthermore, the court held that “[the petitioner non-profit organization] argue[d] more appropriately the rights of its members, and that its nexus with them is sufficient to permit that it act as their representative before this Court.” *Id.*

Much like the NAACP in that case, Freedom Watch represents the views, ideologies and interests of its members and supporters. Freedom Watch acts to protect the interests of U.S. citizens and acts as an ethics body, policing political corruption. Similar to *NAACP*, by bringing this suit on their behalf, Freedom Watch is protecting the identities of its members that would otherwise be ridiculed, if not retaliated against, by establishment government and other interests for expressing unpopular political opinions. Therefore, Freedom Watch is a proper Plaintiff to have associational standing on behalf of its members.

Furthermore, as set forth above, there is also the “reasonable likelihood” that Freedom Watch will suffer from “diminished financial support,” which the Court in *NAACP* found properly confers associational standing. Thus, Freedom Watch should have standing to pursue these claims on behalf of its members and/or supporters.

C. Alternatively, Freedom Watch Has Organizational Standing

“To establish that it has suffered a concrete and demonstrable injury in its own right, an organization must satisfy two criteria. A court must ask ‘first,

whether the agency's action or omission to act injured the organization's interest and, second, whether the organization used its resources to counteract that harm.”

Cigar Ass'n of Am. v. United States FDA, 2017 U.S. Dist. LEXIS 170682, *13 (D.D.C. October 16, 2017). The Court in *Cigar Ass'n* analyzed a case where an organization was found to have organizational standing - *People for the Ethical Treatment of Animals v. United States Dep't of Agric.*, 418 U.S. App. D.C. 223, 797 F.3d 1087 (2015). In *PETA*, the U.S. District Court for the District of Columbia found that the U.S. Department of Agriculture's ("USDA") refusal to apply the protections of the Animal Welfare Act ("AWA") to birds conferred upon PETA organizational standing to sue because it "perceptibly impaired PETA's mission in two respects: it precluded PETA from preventing cruelty to and inhumane treatment of these animals through its normal process of submitting USDA complaints and it deprived PETA of key information that it relies on to educate the public." *Id.* at 1094 (quotations omitted). This same Court agreed. It held that "In other words, the USDA's allegedly unlawful failure to apply the AWA's general animal welfare regulations to birds has perceptibly impaired [PETA's] ability to both bring AWA violations to the attention of the agency charged with preventing avian cruelty and continue to educate the public." *Id.* at 1095 (quotations omitted).

The facts here are nearly indistinguishable from *PETA*. Freedom Watch's mission is also to educate the public of government corruption and abuse. Freedom Watch does so through the use of Freedom of Information Act requests as well as litigation, which is analogous to PETA's use of agency complaints to fulfill its mission to prevent cruelty and inhumane treatment of animals. Both cases lie upon agency inaction: *PETA* was based on the USDA's refusal to apply the AWA to birds, Freedom Watch's case is based on the USDOJ and FBI's refusal to investigate. The injuries are the same as well. Whereas this Court in *PETA* found that PETA's injury resulted from (1) an inability to fulfill its mission to prevent cruelty and inhumane treatment of animals through its normal process of submitting USDA complains, and (2) a deprivation of key information that PETA relied on to inform the public, here Freedom Watch's injury is also an inability to fulfill its mission to inform and educate the public about government corruption and abuse through its normal process of submitting FOIA requests and litigation, and a deprivation of information to inform the public. Lastly, Freedom Watch had to expend resources outside the scope of its normal course of business – the filing of the OPR and IG Complaint in ECF No. 1-1 to counteract Appellees specific refusal to act. Thus, Freedom Watch clearly has organizational standing to sue.

D. Freedom Watch's Injury is Redressable by the District Court

An ethics investigation conducted by the AG, USDOJ, the OPR, the IG, and FBI can rectify Freedom Watch's injury by finding those responsible for the illegal grand jury leaks, conflicts of interest, and illegal search and seizure of emails, and holding them accountable. Yet, Judge Jackson erroneously contends that there is no "mandatory" duty for Appellees to act.

It is the affirmative duty of Defendants to conduct an ethics investigation by OPR and the IG into the gross prosecutorial misconduct and bad faith involved in the torrent of leaks coming from Mr. Mueller and his team, the conflicts of interest, and the illegal search and seizure of emails. For instance, the OPR's website states: The objective of OPR is to ensure that Department of Justice attorneys continue to perform their duties in accordance with the high professional standards expected of the Nation's principal law enforcement agency.⁷

Furthermore, it is expressly stated that OPR, "reporting directly to the Attorney General, **is responsible for investigating allegations of misconduct involving Department (of Justice) attorneys...as well as allegations of misconduct of law enforcement personnel....**"⁸ OPR and the OIG work closely together, as evidenced by the fact that OPR's website delineates its relationship with the OIG, stating that, "[s]ome allegations of misconduct by Department (of

⁷ *Office of Professional Responsibility*, USDOJ, available at: <https://www.justice.gov/opr>.

⁸ *Id.* (emphasis added)

Justice) attorneys do not fall within the jurisdiction of OPR and are investigated by [OIG].”⁹ In the same vein, the mission of the OIG, as set forth and proudly admitted to on its website is “to **detect and deter** waste, fraud, **abuse, and misconduct in DOJ programs and personnel**, and to promote economy and efficiency in those programs.”¹⁰ The USDOJ, of which OPR and OIG are a part, has an overarching mission statement and thus duty that mandates its employees to “ensure fair and impartial administration of justice for all Americans.”¹¹ Thus, it is abundantly clear that the OIG and the OPR, working directly with the AG, have a clear and unequivocal duty, as set forth and proudly admitted to explicitly on their own websites, to investigate and discipline the exact type of unethical misconduct and bad faith involved in the torrent of leaks coming from Mr. Mueller and his team, the conflicts of interest, and the illegal search and seizure of emails.

The gross prosecutorial misconduct and bad faith involved in the torrent of leaks coming from Special Counsel Mueller and his team on a daily basis, the conflicts of interest, and the illegal search and seizure of emails clearly warrant thorough ethics investigation and discipline, as it violates the oath of office as well as the rules of ethics and professional responsibility. Under 5 U.S.C. § 3331, all federal employees elected or appointed to an office of honor or profit must swear

⁹ *Id.*

¹⁰ *Meet the Inspector General*, USDOJ, available at: <https://oig.justice.gov/about/meet-ig.htm>.

¹¹ *About DOJ*, USDOJ, available at: <https://www.justice.gov/about>.

that they will “support and defend the Constitution of the United States against all enemies, foreign and domestic; that [they] will bear true faith and allegiance to the same....” The unethical violation of grand jury secrecy, conflicts of interest and the illegal search and seizure of emails runs afoul of the Constitution, in contravention of the administered oath of 5 U.S.C. § 3331 that federal employees have taken. Freedom Watch and public at large, who and which depends on the integrity of Justice Department lawyers, who must take the oath of office set forth above, will be harmed if they are not investigated and disciplinary remedies are not imposed to ensure that they adhere to the highest of ethical standards.

It is disingenuous at best to argue that the duties set forth above are anything less than “mandatory.” These are publicly published duties instituted by Appellees themselves. If there is no mandatory duty to follow these duties, then what is the purpose of the Appellee agencies and offices in the first place?

II. The District Court Erred When It Refused to Recuse Judge Jackson

Judge Jackson’s inherent and manifest political biases and conflicts of interest make recusal or disqualification necessary under both 28 U.S.C. § 144 and 28 U.S.C. § 455. It is well settled that a judge cannot exercise political biases and have a conflict of interest and remain on a case. This is codified in the Model Rules of Judicial Conduct 2.4(B), which state, “[a] judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge’s

judicial conduct or judgment.” Judge Jackson’s conflicts, which are manifest through demonstrated political bias, mandate recusal.

Furthermore, under 28 U.S.C. § 144:

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

This statute is not ambiguous—if the requirements are met, another judge must be assigned to take over the matter. An impartial judiciary is a fundamental component of the system of justice in the United States. The right to a “neutral and detached judge” in any proceeding is protected by the Constitution and is an integral part of maintaining the public’s confidence in the judicial system. *Ward v. City of Monroeville*, 409 U.S. 57, 61-62 (1972). *See also Marshall v. Jerrico, Inc.*, 446 U.S. 238, 243 (1980). To ensure that this right is protected, Congress has sought to cure the impartiality of judges by requiring them to step aside, or in some instances, disqualify themselves, in various circumstances.

In order to preserve the integrity of the judiciary, and to ensure that justice is carried out in each individual case, judges must adhere to high standards of conduct." *York v. United States*, 785 A.2d 651, 655 (D.C. 2001). "A judge should disqualify himself in a proceeding in which his impartiality might reasonably be

questioned. . ." ABA Code of Judicial Conduct Canon 3(C)(1); *See also Scott v. United States*, 559 A.2d 745, 750 (D.C. 1989) (*en banc*). Disqualification or recusal is required when there is even the appearance that the court's impartiality may be called into question, and "could suggest, to an outside observer, such a 'high degree of favoritism or antagonism' to defendants' position that 'fair judgment is impossible.'" *Liteky v. United States*, 510 U.S. 540, 555, 127 L. Ed. 2d 474, 114 S. Ct. 1147 (1994)); *See also Jackson v. Microsoft Corp.*, 135 F. Supp. 2d 38, 40 (D.D.C. 2001) (recusal was proper because the judge "ha[d] created an appearance of personal bias or prejudice").

The disqualification statute, 28 U.S.C. §144, is mandatory and automatic, requiring only a timely and sufficient affidavit alleging personal bias or prejudice of the judge. The judge is a silent defendant, unable to make findings on the truth or falsity of the affiant's allegations, and truth must be presumed. *United States v. Hanrahan*, 248 F. Supp. 471, 474 (D.D.C. 1965) (Emphasis added); and the allegations may be based upon information and belief, *Berger v. United States*, 255 U.S. 22, 34, 65 L. Ed. 481, 41 S. Ct. 230 (1920).

Brotherhood of Locomotive Firemen & Enginemen v. Bangor & Aroostook Railroad Co., 380 F.2d 570, 576 (D.C. 1967) (emphasis added). As evidence of the absolute requirement of impartiality from judicial officers, the U.S. Courts of Appeals for the Fifth, First, Sixth, Tenth, and Eleventh Circuits have said that close questions should be decided in favor of recusal. *See Republic of Pan. v. American Tobacco Co.*, 217 F.3d 343, 347 (5th Cir. 2000) (citing *In re Chevron*, 121 F.3d

163, 165 (5th Cir. 1997)); *In re United States*, 158 F.3d 26, 30 (1st Cir. 1998); *Nichols v. Alley*, 71 F.3d 347, 352 (10th Cir. 1995); *United States v. Dandy*, 998 F.2d 1344, 1349 (6th Cir. 1993); *United States v. Kelly*, 888 F.2d 732, 744 (11th Cir. 1989).

“The test for personal bias or prejudice in section 144 is identical to that in section 455(b)(1), and the decisions interpreting this language in section 144 are controlling in the interpretation of section 455(b)(1).” *United States v. Sibla*, 624 F.2d 864, 867 (9th Cir. Cal. 1980). In *Litecky v. United States*, the Supreme Court held that, while “judicial rulings alone never constitute a valid basis for a bias or partiality motion,” 510 U.S. at 555 (emphasis added), if the judge succumbs to extrajudicial influence, he is subject to such a motion. Even more, in the absence of an extrajudicial influence, judicial rulings coupled with the requisite “degree of favoritism or antagonism” can serve as the basis for such a motion even “when no extrajudicial source is involved.” *Id.* Lastly, “opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings” constitute a basis for such a motion if “they display a deep-seated favoritism or antagonism that would make fair judgment impossible.” *Id.*

As set forth above, Judge Jackson has clearly exhibited her deep-seated bias and prejudice not only in this case, but in others involving Mr. Klayman and

Freedom Watch as well. Judge Jackson *sua sponte* set an Order to Show Cause why the Court has subject matter jurisdiction over this action, before any Defendant had even appeared in the matter and subsequently rushed to dismiss Freedom Watch's claims without even granting leave to amend. Furthermore, and consistent with this her ruling the Defamation Case, in which Plaintiff's counsel participated, exhibits her deep-seated favoritism toward Democrat political interests and the concomitant and related protection of former Ms. Clinton that evidences and underscores the political extra-judicial prejudice that will directly influence her rulings in this matter. Lastly, Judge Jackson is currently sitting on the Paul Manafort (Mr. Manafort") prosecution, which is directly related to this matter, and her conduct in presiding over Mr. Manafort's prosecution also exemplifies personal and extra judicial bias as well as presents a manifest conflict of interest.

CONCLUSION

Based on the foregoing, Freedom Watch respectfully requests that this Court enter an order remanding this matter to District Court, to another randomly assigned judge, for further proceedings. Freedom Watch clearly has standing to pursue a writ of mandamus, and must be allowed to do so before a truly neutral and detached arbiter in the interests of justice and fundamental fairness.

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Dated: February 20, 2018

Respectfully Submitted,

/s/ Larry Klayman_____

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/s/ Larry Klayman

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I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically and served through the court's ECF system to all counsel of record or parties listed below on February 20, 2018

/s/ Larry Klayman