



PRESS RELEASE

Attorney General Frosh Files Motion Challenging the Appointment of Whitaker as Acting Attorney General

BALTIMORE, MD (November 13, 2018) - Maryland Attorney General Brian E. Frosh today filed a [motion](#) challenging the appointment of Matthew G. Whitaker as Acting Attorney General. The motion was filed as part of the State's lawsuit, *Maryland v. U.S. et al.*, which seeks to uphold the Affordable Care Act's protection of people with preexisting conditions and other key provisions. In his motion, Attorney General Frosh argues that President Trump's appointment of Whitaker is illegal and unconstitutional, and Deputy U.S. Attorney General Rod J. Rosenstein must be named Acting Attorney General in his stead. Attorney General Frosh asks the Court to declare Rosenstein Acting Attorney General and to recognize his authority to represent the United States in this case.

"The Constitution and Congress have established vitally important processes for filling high-level vacancies in the federal government," said Attorney General Frosh. "Few positions are more critical than that of U.S. Attorney General, an office that wields enormous enforcement power and authority over the lives of all Americans. President Trump's brazen attempt to flout the law and Constitution in bypassing Deputy U.S. Attorney General Rosenstein in favor of a partisan and unqualified staffer cannot stand."

On November 7, then-Attorney General Jefferson B. Sessions resigned at the request of President Trump, and the President immediately announced by tweet that the U.S. Attorney General's Chief of Staff, Matthew Whitaker, would assume the position of Acting Attorney General. In the motion filed today, Attorney General Frosh demonstrates that Whitaker's appointment violates 28 U.S.C. Section 508, the succession statute that vests full authority in the Deputy Attorney General should the Office of Attorney General become vacant. Whitaker's appointment also violates the Constitution's Appointment Clause requiring "principal officers," or those who report only to the President, to be confirmed by the Senate absent highly unusual circumstances not present here.

"The Attorney General's succession statute and the Constitution protect the country against exactly what President Trump has attempted to do here – pluck an unqualified and unconfirmed partisan to be the nation's chief law enforcement officer in order to protect the President personally rather than the rule of law," said Attorney General Frosh.

On September 13, 2018, Attorney General Frosh filed the [underlying lawsuit](#) because then-U.S. Attorney General Sessions took the exceptional step of certifying to Congress that he would not defend the Affordable Care Act's protection of people with pre-existing conditions and other key

consumer safeguards. A new Attorney General could change this legal posture. Because Whitaker's appointment as Acting Attorney General is illegal, however, he lacks any authority to represent the United States in litigation. Any action he would take in this case would be invalid, including filing the government's response to the State's complaint due on November 16. Since Whitaker's illegal appointment harms the State's interest in moving its case forward to protect the Affordable Care Act, the Court should immediately declare Deputy U.S. Attorney General Rosenstein as Acting Attorney General so the lawsuit can proceed.

"In this case, the health care of millions of Marylanders and Americans is at stake," said Attorney General Frosh. "The suit cannot go forward without a legitimate Attorney General, and an Acting Attorney General making decisions that could affect matters of life and death without lawful authority puts all of us at risk."

The State has requested the Court's expedited consideration.

[Frequently Asked Questions](#)