

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

STATE OF MARYLAND,

\*

*Plaintiff,*

\*

v.

Case No.: 1:18-cv-02849-ELH

\*

UNITED STATES OF AMERICA, *et al.*,

\*

*Defendant.*

\* \* \* \* \*

**PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION, TO SUBSTITUTE  
DEFENDANT, AND TO EXPEDITE CONSIDERATION OF THESE MATTERS**

Plaintiff, the State of Maryland, hereby moves for a preliminary injunction as set forth below and for the reasons set forth in the accompanying Memorandum of Law in Support of Plaintiff’s Motion for a Preliminary Injunction. Fed. R. Civ. P. 65(a). Plaintiff seeks to restrain and enjoin defendants from answering the complaint and proceeding in this case with former Chief of Staff to the Attorney General Matthew G. Whitaker appearing in the official capacity of the Acting Attorney General. Additionally, plaintiff seeks to substitute Deputy Attorney General Rod J. Rosenstein as Acting Attorney General in his official capacity in place of former Attorney General Jefferson B. Sessions III, under Federal Rule of Civil Procedure 25.

1. On November 7, 2018, Sessions submitted his resignation as Attorney General to President Trump. *See* Letter from Jefferson B. Sessions III to President Donald J. Trump (Nov. 7, 2018), *available at* <https://cnn.it/2SVkdaQ> (last accessed Nov. 12, 2018). Shortly thereafter, President Trump appointed Whitaker as the Acting Attorney General. *See* Donald J. Trump (@realDonaldTrump), Twitter (Nov. 7, 2018, 11:44AM), <https://bit.ly/2STEopE>. As demonstrated in the Memorandum, the appointment of Whitaker as Acting Attorney General instead of Deputy Attorney General Rosenstein violates the Attorney General Succession Act, 28 U.S.C. § 508, as well as the Appointments Clause of the Constitution, U.S. Const. art. II, § 2, cl.

2. An injunction is warranted because plaintiff is likely to show that Whitaker's appointment is unlawful, allowing Whitaker to act as Attorney General will cause plaintiff irreparable injury in multiple ways, the balance of hardships are in plaintiff's favor, and the appointment of the appropriate Acting Attorney General according to the requirements of the U.S. Code and Constitution is of immense public interest due to the Attorney General's plenary authority over federal litigation, as well as substantial policymaking and oversight power.

3. If the Court determines that this Motion should properly be considered a Motion to Substitute a Party under Federal Rule of Civil Procedure 25, plaintiff requests that the Court order substitution of Deputy Attorney General Rosenstein to appear in his official capacity as Acting Attorney General as the successor to former Attorney General Sessions. Because, as explained in the Memorandum, Rosenstein is the proper successor to Sessions, this Court should use its discretion to "order substitution at any time" under Rule 25(d) to substitute Deputy Attorney General Rosenstein as Acting Attorney General in his official capacity.

4. In light of the significant and time-sensitive issues involved and the irreparable nature of the injury the injunction would prevent, Maryland also requests that this Court expedite consideration of the Motion for Preliminary Injunction or Motion to Substitute under 28 U.S.C. § 1657(a). Defendants' response to the Complaint, ECF 1, is due soon. Because plaintiff initiated this litigation partly due to Attorney General Sessions' report under 28 U.S.C. § 530D that the Department of Justice will not defend the constitutionality of 26 U.S.C. § 5000A(a), *see* Letter from Jefferson B. Sessions III to The Honorable Paul Ryan (June 7, 2018), *available at* <https://www.justice.gov/file/1069806/download> (last accessed Nov. 12, 2018), it is crucial that the appropriate person appear before this Court as the Acting Attorney General to present the government's position in response to the Complaint. Once Whitaker appears as Acting Attorney

General on defendants' response, it will be difficult to unwind any positions that the Attorney General takes regarding the complaint.

The issues underlying the Motion for Preliminary Injunction and the Motion to Substitute are purely legal, and, as a matter of judicial efficiency, the issues underlying both motions are the same. Thus, consideration of the motion for preliminary injunction or the motion for substitution will involve review of the same question of law, namely, the legality of former Chief of Staff Whitaker's appointment as Acting Attorney General. For these reasons and as demonstrated in the Memorandum, there is good cause for expedited consideration. 28 U.S.C. § 1657(a).

For the foregoing reasons, plaintiff respectfully requests that this Court:

(a) issue a judgment under the Declaratory Judgment Act, 28 U.S.C. § 2201, declaring that Deputy Attorney General Rod J. Rosenstein is the Acting Attorney General of the United States, and recognizing Deputy Attorney General Rosenstein's authority to issue a report on the enforcement of laws to Congress under 28 U.S.C. § 530D regarding the Department of Justice's position regarding 26 U.S.C. § 5000A(a);

(b) declare that former Chief of Staff to the Attorney General Matthew G. Whitaker is not the Acting Attorney General;

(c) grant the motion for preliminary injunction enjoining Whitaker from supervising this matter as Acting Attorney General or appearing in an official capacity as Acting Attorney General in this matter;

(d) substitute Rod J. Rosenstein in his capacity as Acting Attorney General for Attorney General Jefferson B. Sessions, III, as a defendant in this matter;

(e) require that any future briefing on this Motion proceed on an expedited schedule; and

(f) grant such other and further relief as this Court may deem just and proper.

BRIAN E. FROSH  
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/s/ Julia Doyle Bernhardt

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