

United States Senate

WASHINGTON, DC 20510

January 17, 2019

The Honorable Christopher A. Wray
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Washington, D.C. 20535

Dear Director Wray:

I write regarding recent reporting in the *New York Times* and elsewhere that, after President Trump dismissed FBI Director James Comey on May 9, 2017, FBI agents opened a counterintelligence investigation into whether the President's exercise of his constitutional prerogatives to conduct foreign policy, oversee investigations, and appoint and dismiss officers were themselves a threat to national security.¹

This reporting brings to mind some of the darker chapters of the FBI's history, when unaccountable individuals within the FBI used the agency's investigatory powers as a weapon against political opponents. As you know, the President has "plenary and exclusive power ... as the sole organ of the federal government in the field of international relations." *United States v. Curtiss-Wright Export Co.*, 299 U.S. 304, 320 (1936). But according to these press reports, FBI agents opened a counterintelligence investigation against the President based largely on foreign policy disagreements like his "refus[al] to criticize Russia on the campaign trail" and the Republican Party's convention platform on Ukraine.

The FBI has no authority to encroach on the President's foreign policy prerogatives. Yet these press reports state that the FBI opened a counterintelligence investigation because the President's foreign policy positions and exercise of his constitutional authority to appoint and dismiss officials might have "hurt the bureau's effort to learn how Moscow interfered in the 2016 election and whether any Americans were involved." Even more disturbing, in a direct threat to agency accountability, the FBI agents in question reportedly considered opening the investigation without the direction or supervision of their leadership, and with the aim of avoiding any later order to cease the investigation.

¹ Adam Goldman, Michael S. Schmidt, and Nicholas Fandos, *F.B.I. Opened Inquiry Into Whether Trump Was Secretly Working on Behalf of Russia*, *NY Times* (Jan. 11, 2019).

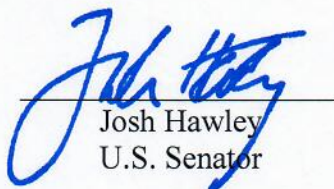
I am deeply troubled by these accounts. That FBI agents would seek to bring a counterintelligence investigation against the President as a potential national-security threat for the exercise of his office is more than unprecedented—it is alarming. It undermines the political accountability and structure of the executive branch.

In response to these concerns, please provide my office with the following information:

1. Outside of Special Counsel Robert Mueller's investigation, is the FBI conducting a counterintelligence investigation against the President for the exercise of his constitutional authority in dismissing Director Comey?
2. Which officials within the FBI authorized the opening of a counterintelligence investigation, did they obtain pre-approval with supervisors, were they subject to any disciplinary review or action, and do they remain employed with the FBI today?
3. Has the FBI ever previously initiated a counterintelligence investigation against the President based on the exercise of his constitutional authority?

I appreciate your prompt attention to this matter.

Sincerely,



Josh Hawley
U.S. Senator