



WIKIPEDIA
The Free Encyclopedia

2025 dismissals of U.S. inspectors general

On January 24, 2025, U.S. President Donald Trump announced the immediate firing of at least 17 inspectors general across various federal government cabinet departments and agencies. The late-night mass dismissal raised significant concerns about government oversight and potential legal violations, and was called a "**Friday night coup**" or "**Friday night purge**" by media and critics.^{[1][2][3][4]}

Background

Inspectors general (IGs) serve as independent watchdogs within federal agencies, tasked with investigating allegations of fraud, waste, and abuse. Their roles are to maintain transparency and accountability within government operations. These officials are appointed to serve across different administrations and are protected under federal law, which requires the president to provide a 30-day notice to Congress before any dismissal.^{[1][5]} As of July 2014, there were 72 statutory IGs.^[6]

The firings

On the night of January 24, 2025, Trump announced the immediate firing of approximately 17 inspectors general from various agencies, including the Department of Defense, State Department, Department of Housing and Urban Development, Department of Veterans Affairs, Department of Energy, and Department of Transportation. According to reports, the inspectors general were notified of their termination via email, citing "changing priorities" as the reason for their dismissal.^[1]

- Phyllis Fong, Department of Agriculture
- Mike Ware, chair of Council of the Inspectors General on Integrity and Efficiency (CIGIE)^[7]
- Mark Greenblatt, Interior IG^{[8][9]}
- Rae Oliver Davis, Inspector General of HUD, was confirmed to have been terminated^[10]
- Robert Storch, Inspector General of the Department of Defense^[10]
- Sean O'Donnell – Inspector General of the Environmental Protection Agency (EPA)
- Cardell Richardson Sr. – Inspector General of the State Department
- Christi Grimm – Inspector General of the Department of Health and Human Services (HHS)
- Michael J. Missal – United States Department of Veterans Affairs IG.^[11]
- Paul K. Martin, USAID IG (fired February 11, 2025)^[12]

The Department of Justice Inspector General, Michael Horowitz, former CIGIE chair,^[13] was reportedly not fired.^[10]

Legality

Federal law mandates a 30-day notice to Congress, which critics argue was violated in this instance.^{[1][5]}

Experts have raised concerns that the dismissals may violate the Inspector General Act of 1978, which stipulates the process for the removal of inspectors general. Hannibal Ware, the Inspector General for the Small Business Administration, sent a letter to the White House Office of Presidential Personnel, urging them to reconsider the decision and comply with legal procedures.^[1]

On February 12, 2025, eight of the fired inspectors general sued.^[14]

Reactions

House Democrats condemned the firings in a letter to Trump, characterizing them as an "attack on transparency and accountability". Representative Gerry Connolly, Ranking Member of the House Committee on Oversight and Government Reform, described the action as a "Friday night coup," further stating that it undermines public trust in government institutions.^[1] Representative Angie Craig echoed these concerns, particularly highlighting the dismissal of the inspector general at the Department of Agriculture, noting that such actions threaten the integrity of programs supporting farmers and nutrition assistance.^[10]

Republican lawmakers, including Senator Chuck Grassley and Senator Susan Collins, also voiced concerns. Collins said, "I don't understand why one would fire individuals whose mission it is to root out waste, fraud and abuse."^[1]

On February 13, 2025, *The New York Times* revealed that Phyllis Fong, the fired inspector for the Department of Agriculture, was conducting an investigation into Elon Musk's brain implant startup, Neuralink.^[15] This company had allegedly mistreated dozens of test monkeys that later had to be euthanized. "Musk misled investors about the safety and marketability of the company's device" said Ryan Merkley, director of research advocacy with the Physicians Committee for Responsible Medicine.^[16] The non-profit was the originator of the complaint to the USDA and of a second complaint to the Securities Exchange Commission. The SEC was also conducting an investigation into Neuralink as of the change of leadership in January 2025.^[15]

See also

- 2020 dismissals of inspectors general
- 2025 U.S. Department of Justice resignations
- 2025 United States federal mass layoffs

References

1. Honderich, Holly (26 January 2025). "Trump fires at least a dozen government watchdogs" (<http://www.bbc.com/news/articles/c5yveml59jlo>). *BBC*. Retrieved 26 January 2025.
2. "Trump Fires Numerous Inspectors General in Friday Night Purge" (<https://www.wsj.com/politics/policy/trump-fires-a-number-of-inspectors-general-in-friday-night-purge-fc71fa37>). *The Wall Street Journal*. Retrieved 26 January 2025.
3. "Trump Accused Of 'Dismantling Checks On His Power' After Firing Inspectors General—Here's What To Know" (<https://www.forbes.com/sites/tylerroush/2025/01/25/trump-accused-of-dismantling-checks-on-his-power-after-firing-inspectors-general-heres-what-to-know/>). *Forbes*. Retrieved 26 January 2025.
4. Messerly, Megan; Gerstein, Josh; Cheney, Kyle; Toosi, Nahal (January 25, 2025). "Trump fires independent inspectors general in Friday night purge" (<https://www.politico.com/news/2025/01/25/donald-trump-inspectors-general-firing-00200611>). *Politico*. Retrieved January 26, 2025.
5. Miller, Zeke; Tucker, Eric; Weissert, Will (January 25, 2025). "Trump uses mass firing to remove independent inspectors general at a series of agencies" (<https://apnews.com/article/trump-inspectors-general-fired-congress-unlawful-4e8bc57e132c3f9a7f1c2a3754359993>). *Associated Press News*.
6. "THE INSPECTORS GENERAL" (https://www.ignet.gov/sites/default/files/files/IG_Authorities_Paper_-_Final_6-11-14.pdf) (PDF). *www.ignet.gov*. 14 July 2014. Retrieved 9 September 2023.
7. Dobkin, Rachel (2025-01-26). "Donald Trump just "technically" violated the law—Lindsey Graham" (<https://www.newsweek.com/donald-trump-lindsey-graham-inspectors-general-firing-2020984>). *Newsweek*. Retrieved 2025-01-27.
8. "Trump fires 18 inspectors general overnight in legally murky move" (<https://www.nbcnews.com/politics/white-house/trump-fires-multiple-inspectors-general-legally-murky-overnight-move-rcna189261>). *NBC News*. 2025-01-26. Retrieved 2025-01-27.
9. Talking Feds with Harry Litman (2025-01-26). *BREAKING NEWS: 1-on-1 With Fired Inspector General* (<https://www.youtube.com/watch?v=jjCY8agQJ6Q>). Retrieved 2025-01-27 – via YouTube.
10. "Trump ousts more than a dozen inspectors general in late night action" (<https://thehill.com/homenews/administration/5106541-donald-trump-inspectors-general-ousters/>). *The Hill*. Retrieved 26 January 2025.
11. "Trump fires VA's top watchdog in purge of federal inspectors general" (<https://www.stripes.com/veterans/2025-01-27/veterans-affairs-inspector-general-trump-16619381.html>). *Stars and Stripes*. Retrieved 2025-01-30.
12. Hansler, Jennifer (2025-02-11). "USAID IG fired day after report critical of impacts of Trump administration's dismantling of the agency | CNN Politics" (<https://www.cnn.com/2025/02/11/politics/usaid-inspector-general-fired-trump>). *CNN*. Retrieved 2025-02-12.
13. "Statement of Michael E. Horowitz, Chair, Council of the Inspectors General on Integrity and Efficiency, Inspector General, U.S. Department of Justice before the U.S. House of Representatives Committee on Oversight and Reform, Subcommittee on Government Op" (<http://web.archive.org/web/20250122192230/https://oig.justice.gov/node/627>). *oig.justice.gov*. Archived from the original (<https://oig.justice.gov/node/627>) on 2025-01-22. Retrieved 2025-01-27.
14. Whitehurst, Lindsay (February 12, 2025). "8 Inspectors General Fired By Trump File Federal Lawsuit Claiming Unlawful Termination" (https://www.huffpost.com/entry/8-inspectors-general-fired-trump-file-federal-lawsuit-claiming-unlawful-termination_n_67acba87e4b0239406deaa3b). *HuffPost*. Retrieved February 12, 2025.
15. Lipton, Eric; Grind, Kirsten (February 13, 2025). "Elon Musk's Business Empire Scores Benefits Under Trump Shake-Up" (<https://www.nytimes.com/2025/02/11/us/politics/elon-musk-companies-conflicts.html>). *New York Times*. Retrieved February 17, 2025.
16. "SEC Reopens Investigation Into Elon Musk's Neuralink Likely Launched by Medical Ethics Group's Complaint About Monkey Deaths" (<https://www.pcrm.org/news/news-releases/sec-reopens-investigation-elon-musks-neuralink-likely-launched-medical-ethics>). Physicians Committee for Responsible Medicine. December 13, 2024. Retrieved February 17, 2025.



Inspectors general fired by Trump issue warning about lack of oversight

Feb 19, 2025 6:40 PM EDT

The Trump administration's first weeks saw a wave of firings, including more than 17 inspectors general, independent watchdogs overseeing government waste, fraud and abuse. These actions have already prompted a lawsuit challenging their legality and ongoing protests outside federal buildings. Laura Barrón-López speaks with two of the fired inspectors general, Christi Grimm and Robert Storch.

Read the Full Transcript

Notice: Transcripts are machine and human generated and lightly edited for accuracy. They may contain errors.

Geoff Bennett:

Within days of taking office, President Trump fired more than 17 inspectors general across the federal government. It's already resulted in a lawsuit challenging the legality of the dismissals and continued protests outside federal agency buildings, like outside the Department of Health and Human Services today.

Our White House correspondent, Laura Barron-Lopez, has more.

Laura Barron-Lopez:

Geoff, eight of those fired inspectors general are now suing the Trump administration, seeking to be reinstated to their positions. These independent government watchdogs are a key check on waste, fraud and abuse.

To discuss the impact, I'm joined by two of the top watchdogs fired by the president, Christi Grimm, former inspector general for the Department of Health and Human Services, and Robert Storch, former inspector general for the Department of Defense.

Thank you both for being here with me today.

You were both fired on a Friday night and the White House said that it was terminating you and other I.G.s due to changing priorities.

Rob, did that language stick out to you?

Robert Storch, Former Inspector General, Department of Defense: It did. It's a great question, because administrations come and go, right? And they all have their own priorities and that's fine. Elections have consequences.

I.G.s, however, are nonpartisan independent watchdogs. So, whatever the priorities of the administration may be, we do independent oversight to look for waste, fraud and abuse and to ensure that the programs and operations of the departments we oversee are economical, that they're efficient, that they're effective.

So that stuck out from the very beginning.

Laura Barron-Lopez:

Christi, you're and Rob's inspectors general offices are two of the largest across the federal government. But when it comes to Health and Human Services, what are some of the examples of abuse and fraud that you investigated over the last few years? And how does your work impact the public?

Christi Grimm, Former Inspector General, Department of Health and Human Services: We would oversee programs run out of the FDA, the Centers for Disease Control, National Institutes of Health, the Center for Medicare and Medicaid Services.

And some of the waste, fraud, abuse work that we have done, we do work looking at abuse, neglect in nursing homes. And so the work we did is protecting a family member that you might have living in a nursing home.

One case is coming to mind in Tennessee where we investigated a nursing home chain, a large nursing home chain. And we found that the services they were providing were worthless and they were — nursing home residents were incurring harm, medication errors, not turning for bed ulcers, not providing the wound care that is necessary.

Some of these residents were found in beds soaked with urine. So it touches every American. The HHS programs that we oversee and the work we did really did protect people and programs.

Laura Barron-Lopez:

Rob, last year at the Department of Defense, you found that \$1 billion worth of equipment, like shoulder-fired missiles, kamikaze drones, and more, that were sent to Ukraine were not properly tracked. That's just one example. But what are others that your office investigated?

Robert Storch:

So in the Ukraine area, for instance, we did something more than four dozen reports, programmatic oversight, looking at all aspects of U.S. security assistance to Ukraine.

The example you mentioned is a great one, because those are amongst the most sensitive items that the United States gave to Ukraine. And we made significant findings that the department had real challenges in tracking that stuff appropriately. We made recommendations to help them to improve.

And then, in our later reporting, we found they had improved. And the critical point is, if I or my team had been seen as partisan or advancing whatever the administration's agenda was, we never would have been able to do that hard-hitting work.

Laura Barron-Lopez:

As you both have said, you looked at abuse, fraud, waste.

Elon Musk's team, the department of — known as the Department of Government Efficiency, is claiming that they're uncovering fraud, waste, and abuse, the same things both of you did in your role.

So, Christi, how is DOGE's work different than yours?

Christi Grimm:

The missions, the stated missions, sound very similar, don't they?

In order to prove a criminal case, that takes a long time. There are many steps from beginning to end. The work that we do is grounded in standards that govern how audits are done and investigations are done and evaluations are done. And it is painstaking and rigorous, the work that's put together, so that we may have the credibility that we have to make recommendations.

And so the independence piece is also critical here, because, in order for us to do work that isn't viewed as partisan, we needed that independence. We are not an arm of the president. We don't implement policy. We point out where things aren't going well. We point out error rates. We recommend collection of overpayments. We identify where there are safeguards that aren't working to protect people.

Robert Storch:

In fact, the chair of the Council of Inspectors General actually reached out to the contacts at DOGE to try to engage with them and talk about what we do, because, if you're interested in waste, fraud and abuse, that's what our offices go after, right, and have gone after for years. And so he never heard back.

Laura Barron-Lopez:

But speaking of DOGE and Elon Musk, Elon Musk's SpaceX, spacecraft company, as well as Starlink, the satellite company, have billions worth of defense contracts. And his team is also leading mass firings that are about to hit the Pentagon as early as this week.

What's the risk, Rob, of a weakened inspector general office as Elon Musk's team is taking over that agency?

Robert Storch:

I obviously can't comment on any specifics, but what I would say is, having been a prosecutor a long time and then in the I.G. community, is, the problem with conflicts of interest is that they pervert the selection process.

What we all want as Americans is to know that, when decisions are made by government, they're made based on the merits, right? And the problem with conflicts of interest wherever they occur is that they change that calculus potentially, right? And that's why it's such a serious issue.

Christi Grimm:

Laura, can I jump in here?

Laura Barron-Lopez:

Yes.

Christi Grimm:

So you asked about how cuts might affect an I.G. Office.

I want to point to Medicare and Medicaid. Together, combined spending is circa \$1.7 trillion annually. You need smart auditors, experienced auditors, investigators. Health care programs are incredibly complex. And to have these specialties within an OIG that know the programs are closely are part of the department, but — we're independent, but we have connectivity to those programs and people, it allows us to do work that is hard-hitting to deliver hard truths.

And if you're reducing without regard and you get rid of these watchdogs and the people that work for them, I fear for some of these programs, including oversight for Medicare and Medicaid.

Laura Barron-Lopez:

When you take all of these actions together that we're talking about, the firing of more than 17 inspectors general, what do you think that this means for the long-term ability of offices like the ones that you led to provide a check on power?

Robert Storch:

It's deeply troubling, right?

I mean, the message that gets sent is that the — there's not receptiveness to the sort of oversight that Christi is talking about.

Christi Grimm:

We're the eyes and ears of the public, and it's important to remember that. So these are the kinds of things that Americans, taxpayers need to know about what I.G.s do.

Laura Barron-Lopez:

Christi Grimm, Robert Storch, thank you so much for your time.

Robert Storch:

LAW FARE

Executive Branch

Trump Fired 17 Inspectors General—Was It Legal?

Jack Goldsmith

Monday, January 27, 2025, 9:25 AM

Probably so, but Congress has lawfully constrained the president's authority to replace the fired IGs.

On Friday night, President Trump removed at least 17 inspectors general, the executive branch watchdogs who conduct audits and investigations of executive branch actions. The removals are probably lawful even though Trump defied a 2022 law that required congressional notice of the terminations, which Trump did not give. Trump probably acted lawfully, I think, because the notice requirement is probably unconstitutional.

The real bite in the 2022 law, however, comes in the limitations it places on Trump's power *to replace* the terminated IGs—limitations that I believe are constitutional. This aspect of the law will make it hard, but not impossible, for Trump to put loyalists atop the dozens of vacant IG offices around the executive branch. The ultimate fate of IG independence during Trump 2.0, however, depends less on legal protections than on whether Congress, which traditionally protects IGs, stands up for them now. Don't hold your breath.

Background

The Inspector General Act of 1978 states that “[a]n Inspector General may be removed from office by the President.” For a long time the Act had also required the president to communicate to Congress the “reasons” for the removal within 30 days before removal. A recent amendment to the Inspector General Act, the Securing Inspector General Independence Act of 2022 (Title LII, Subtitle A), changed the notice provision to require a “substantive rationale, including detailed and case-specific reasons” for the removal. It also narrowed the president's options under the Federal Vacancies Reform Act of 1998 (FVRA), for replacing a terminated IG. The 2022 law was mainly a response to Trump's first-term IG firings and manipulations of the IG system. It was one of very few executive branch reforms during the Biden administration.

The Friday IG terminations were announced in emails from Sergio Gor, the White House Director of Presidential Personnel. Gor said the removals were immediate and reflected “changing priorities.” Hannibal Ware, the IG of the Small Business Administration, was one of the fired IGs. In his capacity as the chairperson of the IG oversight and coordination body, he wrote Gor to claim that the firings are not “legally sufficient to dismiss” presidentially appointed and Senate confirmed IGs.

On Saturday night, Trump defended the terminations on the ground that “it’s a very common thing to do.” (Ronald Reagan fired “15 confirmed and acting IGs then working across the executive branch” soon after his 1981 inauguration, though the IG statute at the time authorized him to do so without constraint; and Presidents Obama and Biden fired at least one IG, but they complied with different versions of the notice requirement, as did Trump in his first term.)

“I don’t know [the fired IGs],” Trump added, “but some people thought that some were unfair or were not doing the job.” According to the Washington Post, “Trump said he intended to install new people in the roles but said they would have some independence.”

The Notice Standard May Not be Constitutional

The congressional notice requirement does not specify the grounds on which the president can remove an IG. Rather, it requires the president to provide Congress, with thirty days notice, a “substantive rationale, including detailed and case-specific reasons” for the removal. This is plausibly seen as a very weak for-cause requirement—the president must provide some cause (a “substantive” rationale) in advance of the firing, with details.

One could argue that “changing priorities” is a substantive rationale for the firings. Gor apparently did not provide detailed and case-specific reasons for each firing, but there might have been no reasons to give beyond the “changing priorities” rationale. Yet Trump clearly did not give any notice to Congress. So the administration did not comply with the notice provision.

The Trump administration has a pretty strong argument that the notice provision is unconstitutional. The Court has recognized the president’s “unrestricted removal power” over executive branch officials, subject to only “two exceptions.” The potentially relevant exception here comes from the shriveled and maybe-dead precedent of *Morrison v. Olson* (1988). There the Court ruled that the removal protections on the old independent counsel didn’t unduly interfere with the functioning of the Executive Branch because “the independent counsel [was] an inferior officer under the Appointments Clause, with limited jurisdiction and tenure and lacking policymaking or significant administrative authority.”

For reasons explained in this paper by Ari Spitzer, an Inspector general is probably an inferior officer under the Court's appointments clause cases. The main reason is that the IG must "report to and be under the general supervision of the head of the establishment involved."

The president can remove an inferior officer, under *Seila Law*'s interpretation of *Morrison*, unless the officer has "*limited* duties and *no* policymaking or administrative authority." I agree with Spitzer that an IG probably exceeds this standard. IGs in some respects have narrower powers than the independent counsel that was deemed constitutional. They cannot prosecute, for example. But in other dimensions— indefinite tenure and expansive jurisdiction and freedom to initiate an audit or investigation—their powers can be seen as broader than the independent counsel's.

Moreover, IG duties cannot plausibly be described as "limited." And the IG has at least some policymaking authority. It has a duty "to provide policy direction for . . . audits and investigations" even though it does not "determine[]" policies to be pursued by the United States in the nationwide administration of Federal laws." On top of these points, *Seila Law* and more recent decisions have jettisoned other elements of *Morrison*, including its anti-formalist methodology, in the direction of an expanded presidential removal power.

For these reasons, it is a good bet that the Supreme Court will not look kindly on Congress's requirement of a "substantive rationale" and notice for firing IGs. One could see this combination as less onerous than a traditional for-cause restriction of "inefficiency, neglect of duty, or malfeasance in office," though the traditional restriction typically does not have a thirty-day delay. But I don't think these differences matter. The Court has been highly formalistic in its recent removal decisions (including in its removal discussion in *Trump v. United States*). If the Court determines, as I think it will, that the president's exclusive removal power controls the issue, *any* type of congressional constraint must give way.

(There is another tricky issue with the IG removals that I will flag here but lack space to analyze. At least a few of the terminated IGs were career Senior Executive Service (SES) officials with independent statutory job protections. This raises the question whether the president can discharge them from government service (as the removed political IGs clearly are), or whether they must remain in the government in some other SES role. This question intersects with the Trump administration's schedule F gambit and the proper interpretation of the president's power to "remove[]" an IG under the IG statute, and tees up harder Article II questions than I have addressed here. More on this in due course.)

Constitutionally Valid Limitations on Acting IGs

The IG removal issue is not the biggest of deals, since President Trump had clear statutory authority to remove the IGs if he had provided the easy-to-satisfy substantive rationale and thirty days notice. The much more important issue concerns who replaces the removed IGs. On this issue the 2022 IG law has more bite. The law narrows the definition of the “first assistant” who, under the FVRA, presumptively takes over for the removed IG. It also authorizes the president to replace the first assistant only with another Senate-confirmed IG or a GS-15 or higher employee who was in office for more than 90 days during the year prior to the vacancy.

The practical bottom line is that a career official high up in the office of each IG will by law become the acting IG, and Trump can replace that person only with someone already in the IG cadre.

We do not yet know how Trump plans to replace the fired IGs within these constraints. He might nominate new IGs, but they must be confirmed by the Senate, and that likely will not happen this year. The important question is thus whether Trump can find a lawful and congenial replacement for the first assistant under the 2022 law.

One possibility is an already-confirmed IG such as Joseph Cuffari, the embattled Department of Homeland Security IG who was appointed in Trump 1.0 and whom Trump did not fire on Friday. Or Trump can try to find a congenial IG among the non-political employees who were in place during the Biden administration, which might be hard.

The point I want to make for now is that Congress’s narrowing of the president’s options for acting IGs is much more likely to stick in court because Congress has greater authority over acting replacements for a fired IG than it does over the president’s authority to fire an IG in the first place. The reason, in a nutshell, is that “the power to remove attends the power to appoint,” and the Appointments Clause is not the source of authority for the president to appoint acting officials. The president’s constitutional removal power is thus likely not in play with respect to congressional regulation of actings.

I explained this point five years ago:

The Justice Department has long made clear that the Take Care Clause, not the Appointments Clause, gives the president authority to appoint acting officials. It has also made clear that the president’s power to make temporary appointments is defeasible by Congress. As OLC explained in 1994:

The President’s take care authority to make temporary appointments rests in the twilight area where the President may act so long as Congress is silent, but may not act in the face of congressional prohibition. See *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579,

637 (1952) (Jackson, J., concurring). Thus, the Vacancies Act, 5 U.S.C.

§§3345-3348, constitutes a restriction on the President's authority, as opposed to a source of power. If it applies to a given position, the Vacancies Act constitutes the sole means by which a temporary appointment to that position may be made.

This quotation is from an unpublished OLC opinion, "Memorandum for Neil Eggleston, Associate Counsel to the President, from Walter Dellinger, Assistant Attorney General, Office of Legal Counsel, Re: Appointment of an Acting Staff Director of the United States Commission on Civil Rights at 3 (Jan. 13, 1994)," and is quoted and explained on page 164 of this 1996 OLC opinion on "The Constitutional Separation of Powers Between the President and Congress." The George W. Bush administration's OLC relied on the 1994 opinion in 2001 when it reiterated that the president "*may not act in the face of congressional prohibition*" to fill a temporary vacancy (emphasis added).

Some 19th century Justice Department opinions had concluded that Congress could not restrict the president's power to make temporary appointments. The 1996 OLC opinion describes these earlier opinions on pages 162-63 before it rejects their analysis. It further explains that the Justice Department had rejected this earlier view beginning with the enactment of the Vacancies Act of 1868, which "Attorneys General treated . . . as providing the exclusive means of making temporary appointments to those offices covered by the statute."

Congress has a long history of providing specific and narrow criteria that presidents must follow in filling vacancies. For some vacancies, Congress directs the person who shall operate as acting when there is a vacancy and leaves the president no discretion. . . .

Moreover, OLC has made clear—on page 3 of the "Memorandum for Neil Eggleston"—that statutes such as the Federal Vacancies Reform Act that purport to authorize presidents to fill vacancies actually operate as "a restriction on the President's authority, as opposed to a source of power." OLC explained: "If it applies to a given position, the Vacancies Act constitutes the sole means by which a temporary appointment to that position may be made."

Broad congressional control of vacancies makes constitutional sense. If the president had exclusive constitutional power to appoint acting officials, then the Recess Appointments power, with its specific limitations, would be practically irrelevant, since a president [could] appoint nonpermanent officials through a different route with no limitations. That cannot be right.

Moreover, OLC has justified the president's defeasible power to make temporary appointments as an exercise of the Take Care Clause in order to "keep the government running." The idea seems to be that in the absence of guidance from Congress, the president's duty to enforce the laws entails a residual power to fill vacancies temporarily in the absence of congressional guidance. But this rationale for executive power gives way when Congress provides a rule. The only judicial decision I have found that addresses this issue, Williams v. Phillips, is consistent with this conclusion. In *Williams*, the U.S. Court of Appeals for the D.C. Circuit suggested (but did not hold) that any inherent presidential power to appoint an acting officer persisted only "in the absence of limiting legislation."

I think this analysis remains sound and will prevail in court. But *Trump v. United States* could impact it. There the Court appeared to hold that the Take Care Clause has an exclusive element that supports the president's authority "to discuss potential investigations and prosecutions with his Attorney General and other Justice Department officials" free from congressional regulation, even when the investigation is an allegedly fraudulent attempt to obstruct a federal proceeding.

The Court did not explain how it squared this ruling with prior decisions, like *Youngstown Steel* and *Kendall v. United States*, which denied that the Take Care Clause could be a basis to disregard law. As *Kendall* said, "[t]o contend that the obligation imposed on the President to see the laws faithfully executed, implies a power to forbid their execution, is a novel construction of the constitution, and entirely inadmissible." I do not believe that the Court in *Trump v. United States sub silentio* altered this foundational principle of law compliance beyond the novel and unusual issues presented in that case. I thus doubt that *Trump v. United States* impacts the longstanding understanding between the branches that congressional constraints on actions are binding on the president.

Conclusion

Congress's new constraints on the president's ability to replace fired IGs has an excellent chance of surviving unitary executive scrutiny. These are some of the reasons why I supported IG reform for vacancies even as I believed that IG reform on removal was hopeless.

By themselves, however, legal devices like limitations on who can be acting IG cannot save IG independence from an aggressively threatening president and Department head. Only Congress, by pushing back on the administration through politics, can do that.

Whether the Republican-controlled Congress will push back in a meaningful way seems doubtful, especially in light of the tepid reaction to the firings by traditional IG defenders in Congress.

“There may be good reason the IGs were fired,” said longtime IG protector, Senator Chuck Grassley, on Saturday. “We need to know that if so. I’d like further explanation from President Trump. Regardless, the 30 day detailed notice of removal that the law demands was not provided to Congress.” Senator Rand Paul is another staunch IG advocate, and he chairs the [Senate Committee](#) with jurisdiction over the operation of IGs across the government. According to [ABC news](#), Paul “said he believes many of the inspectors general do need to be replaced and that Trump ultimately has the power to do so. But he noted there may be a process that needs to be followed.”

Weak stuff from congressional IG champions following Trump’s Friday night purge.



Jack Goldsmith

✂ @jacklgoldsmith

🦋 @jacklgoldsmith.bsky.social

[Read More](#)

Jack Goldsmith is the Learned Hand Professor at Harvard Law School, co-founder of *Lawfare*, and a Non-Resident Senior Fellow at the American Enterprise Institute. Before coming to Harvard, Professor Goldsmith served as Assistant Attorney General, Office of Legal Counsel from 2003-2004, and Special Counsel to the Department of Defense from 2002-2003.

}