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When Should the President be Able to Fire a Watchdog?

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When should the president be able to fire a watchdog?

BY ANDREW BRUNSDEN, OPINION CONTRIBUTOR — 07/05/21 05:00 PM EDT
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On Tuesday, the House passed legislation to [protect the independence of inspectors general \(IGs\)](#) that would limit the president's ability to remove them without "cause." One representative voting against the bill objected that the law's list of permissible grounds for termination "would have the effect of preventing a president from removing an IG who is acting in bad faith." It is important to evaluate this argument in the context of other news Tuesday: the [resignation of the IG for the Federal Finance Housing Agency \(FHFA\)](#), after an investigation that found she had "abused her authority" and prompted two senators to demand President Biden fire her. The FHFA IG's resignation rendered those demands moot. But applying the House law to the FHFA IG's case demonstrates that concern it will unduly restrict the president's authority is unfounded — the law would permit the president to fire a watchdog when accountability warrants such action.

Proponents of removal protection have sought to prevent future presidential abuses of power after President Trump's retaliatory firing of IGs for their legitimate performance of oversight duties. This included the [terminations of the IG for the intelligence community](#) who reported information that triggered the first Trump impeachment inquiry and [the IG for the State Department](#) who was then investigating Secretary of State Mike Pompeo. Historically, removals of IGs had been rare, but President Trump defied these norms. No law prohibited his blatant attacks on IGs; the president currently can remove an IG for any reason following advance notice to Congress.

Accordingly, the legislation, titled the IG Independence and Empowerment Act, aims to restore and codify the normative commitment to independent oversight by ensuring a degree of freedom from interference or politically motivated retaliation. It does so by establishing both substantive requirements and procedural safeguards to ensure that removal of an IG has an appropriate basis and sufficient justification. Had such protection existed during President Trump's

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term of office, his egregious firings would have violated the law. Conversely, in the FHFA IG's case, the misconduct identified during the investigative process provided cause for termination.

The Council of the Inspectors General on Integrity and Efficiency's (CIGIE) Integrity Committee, which independently reviews allegations of IG wrongdoing, determined that Laura Wertheimer, the FHFA IG, created "a culture of witness intimidation" by "ridiculing, belittling, and bullying her staff" for making lawful disclosures and obstructed the investigation by withholding requested information. The committee concluded that Wertheimer "did not appreciate the fundamental leadership and oversight principles reasonably expected of a federal inspector general" and recommended "consideration of substantial disciplinary action, up to and including removal."

The Act requires documentation of one of nine identified reasons to justify removal for wrongdoing or ineffective performance, among them "neglect of duty," a "knowing violation of law," and "abuse of authority." The latter is precisely the finding reached by the Integrity Committee regarding Wertheimer. The FHFA IG's abuse of authority, documented by the committee, supports the conclusion that her removal would have been based on good cause. More broadly, the range of removable offenses in the law supply the president with latitude to ensure the accountability of watchdogs, while committee investigation offers an impartial mechanism to substantiate misconduct that may warrant disciplinary action.

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Although the Act balances independence and accountability as a policy matter, removal protection may still invite a constitutional challenge. Supreme Court decisions from each of the past two terms invalidated removal protection for the directors of the Consumer Financial Protection Bureau and the FHFA. A majority of the Court in these cases ruled that Congress may not restrict the president's authority because presidential accountability required the ability to exercise control through the removal power. Yet the Court also acknowledged prior precedent upholding removal protection for subordinate officers who do not exercise policymaking authority. IGs fall within the category of officers who Congress may constitutionally protect from removal without cause because they rely on the president and agency heads to make judgments of accountability. Whereas IGs lack direct enforcement power to compel action on their reported findings and recommended reforms, the president and agency heads have the control and responsibility to act on the results of IG oversight for the betterment of government. It is the authority to control decisions about how to respond to oversight, more so than removal, that enables the executive branch to exercise control and promote accountability.

Removal for cause protection ensures IGs are able to perform independent oversight without reprisal, while retaining the option of removal when an IG's deviation from standards of integrity and performance is established and documented. It is now incumbent on the Senate to enact this necessary protection for independence and mechanism for reasonable accountability.

Andrew Brunsten is an Adjunct Professor of Law at New York Law School and government attorney. He has an article about inspectors general forthcoming in the William & Mary Bill of Rights Journal.