

**Memorandum**  
**November 16, 2018**

**To: Interested Parties**

**From: The Center for American Progress**

**Re: End-of-Year Spending Deal Must Include Provisions to Protect the Mueller Investigation**

By trying to install Matt Whitaker as acting attorney general, President Trump has plunged the Department of Justice (DOJ) into crisis. The core principle that nobody in America is above the law, even the president, has been turned on its head with an attempted appointment designed to shield the president from facing accountability for his actions.

This end run around the DOJ succession process dramatically [subverts the constitutional prerogatives](#) of Congress by placing an official that the Senate has not confirmed at the helm of the DOJ. Whitaker has been given full authority over federal law enforcement, including the special counsel investigation, and he can use that authority to undermine the investigation in ways hidden from congressional and public view.

For Congress to ignore this crisis would be an abdication of its responsibilities. Although the government is under a continuing resolution intended to keep the government running on the status quo, the current status quo for the Mueller investigation cannot be tolerated.

Members of Congress should not vote for any spending bill that does not include provisions protecting the Mueller investigation. House Democratic Leader Nancy Pelosi (D-CA) and Senate Democratic Leader Chuck Schumer (D-NY) [have](#) been [clear](#) that Democrats will advocate for these protections in the spending bill; Rep. Jerry Nadler (D-NY), the expected incoming chair of the House Judiciary Committee, has made a [similar call](#) that passage of a spending bill be contingent upon protecting the investigation. The DOJ cannot effectively operate with an acting attorney general installed to subvert a lawful investigation, and so Congress cannot fund the DOJ without express provisions to protect against such possible obstruction of justice.

Congress should start by passing the [Special Counsel Independence and Integrity Act](#), which was voted out of the Senate Judiciary Committee on a bipartisan basis. This bill would provide important protections, including codifying DOJ regulations related to the special counsel, protecting the special counsel from being removed for improper reasons, and requiring that Congress receive a copy of the special counsel's report.

Given Trump's efforts to put in place political appointees to attack the investigation, and the possibility that political appointees that seek to protect the investigation will be removed from their positions, further steps are warranted. Members of Congress must seek to limit political interference by DOJ appointees, including by ensuring immediate disclosure of any such efforts. Some of these steps can be modeled after the [order](#) issued by Acting Attorney General Robert Bork to provide independence to the new special prosecutor in the wake of President Richard Nixon's Saturday Night Massacre.

Specifically, in addition to the Special Counsel Independence and Integrity Act, Congress should include in the spending bill provisions that:

- Require immediate disclosure to the chairmen and ranking minority members of the House and Senate Judiciary Committees whenever a political appointee overseeing the investigation prevents the special counsel from taking a proposed investigative or prosecutorial step, such as issuing an indictment. The appointee should also be required to provide Congress with a written report explaining the decision and specifying whether he consulted with anyone outside of the DOJ in the process of making that determination
- Require immediate disclosure to the chairmen and ranking minority members of the House and Senate Judiciary Committees whenever a political appointee overseeing the investigation denies a request from the special counsel to change the special counsel's jurisdiction
- Provide the special counsel with such sums as he deems necessary to conduct his investigation
- Provide the special counsel with express authority to make public disclosures as he sees fit, consistent with requirements for the treatment of classified information and information covered by grand jury secrecy requirements

Including these provisions will make it substantially harder for political appointees to interfere in the investigation and also provide Congress with the necessary information to hold oversight hearings and take other action as appropriate.