



Why a Special Counsel is Needed in DOJ's IRS Investigation

Background: Under current law, the Attorney General is able to appoint a Special Counsel when he or she determines that the criminal investigation of a person or matter is warranted. Specifically, the Attorney General is able to appoint a Special Counsel when the investigation or prosecution of that person or matter by a United States Attorney's Office or litigating Division of the Department of Justice would present a conflict of interest for the Department or other extraordinary circumstances, and when under the circumstances it would be in the public interest to appoint an outside Special Counsel to assume responsibility for the matter.

Over a year has passed since we first learned that employees at the Internal Revenue Service (IRS) had been singling out certain conservative groups for further review as they applied for tax-exempt status. As of today, no one has yet been held accountable for this political plan to silence the voices of groups representing millions of Americans. Below are three reasons why the removal of the investigation from the normal process at the Justice Department is warranted and the appointment of a Special Counsel by the Attorney General is in the public's best interest.

#1: There's a Conflict of Interest in the Current Investigation. Earlier this year, Attorney General Holder appointed a Justice Department attorney, Barbara Bosserman, who has donated thousands of dollars to President Obama's election campaigns and the Democratic National Committee, to spearhead the investigation. The fact that Ms. Bosserman is a maxed-out Democratic donor undermines the credibility of the investigation. Americans need to have confidence in not only the result of the investigation, but also the process, and Ms. Bosserman's conclusions will be judged against the backdrop of her political activism.

#2: Administration Officials Have Undermined the Current Investigation. In January 2014, unnamed Justice Department officials [leaked](#) information to the Wall Street Journal suggesting that the Department does not plan to file criminal charges over the IRS's targeting of conservative groups. At a recent House Judiciary Committee oversight hearing on the Justice Department, Congressman Jordan [asked](#) the Attorney General who leaked this information to the media and if the Department plans to prosecute the leaker once identified. Although Attorney General Holder has directed DOJ personnel in the past to aggressively pursue leaks of sensitive information to the media, he admitted that he has not looked into this leak. Furthermore, in an interview on Super Bowl Sunday, President Obama stated that there was "not even a smidgen of corruption" in connection with the IRS targeting. Although DOJ's so-called investigation is ongoing, President Obama publicly undermined the investigation by prematurely declaring the verdict himself.

#3: Apparent Criminal Activity by Lois Lerner and Other Executive Branch Employees. Further investigation of the matter is warranted due to the apparent criminal activity by Lois Lerner and the ongoing disclosure of internal communications showing potentially unlawful conduct by Executive Branch personnel. In April 2014, the House Ways and Means Committee voted out a [referral letter](#) to Attorney General Holder regarding criminal actions taken by IRS employee Lois Lerner and urged him to take a serious review of the evidence uncovered through the Committee's investigation to determine whether she violated criminal statutes. The Committee uncovered three specific acts undertaken by Ms. Lerner that may have violated one or more criminal statutes: she used her position to improperly influence agency action against only conservative organizations, denying these groups due process and equal protection under the law; she impeded official investigations by providing misleading statements in response to questions from the Treasury Inspector General for Tax Administration (TIGTA); and she risked exposing, and may actually have disclosed, confidential taxpayer information, by using her personal email to conduct official business. If convicted of these crimes, Lerner could face up to 11 years in prison.

Conclusion: To restore Americans' trust in the investigation and hold those accountable for targeting Americans for their political beliefs, [H.Res. 565](#) – introduced by Congressman Jim Jordan, House Judiciary Committee Chairman Bob Goodlatte, Oversight and Government Reform Chairman Darrell Issa, Ways and Means Chairman Dave Camp, Congressman Trey Gowdy, Congressman Jason Chaffetz, and Congressman Charles Boustany – calls on Attorney General Holder to immediately appoint an independent Special Counsel to probe this unsettling issue.