

Can the president fire special counsel Robert Mueller? (And then what?)

By [Jonathan H. Adler](#) June 13

Yesterday, Newsmax chief executive Christopher Ruddy, a Trump “confidant,” [told “PBS NewsHour”](#) that he believes the president is “considering perhaps terminating the special counsel.” Ruddy was quick to add that any such move would be a “mistake,” but he also repeated claims that the special counsel, Robert S. Mueller III, has “some real conflicts” of interest because Mueller’s former firm represents parts of the Trump family and he was interviewed as a potential replacement for James B. Comey as FBI director. Others have suggested that Mueller faces a conflict because of his friendship with Comey.

The idea that the president might try to fire a special counsel who is investigating some of the president’s associates (if not the president himself) may seem far-fetched, but we’ve seen this before. During the height of the Watergate scandal, President Richard Nixon ordered his attorney general, Elliot Richardson, to fire special prosecutor Archibald Cox. Richardson refused (having made a commitment to Congress that he would not follow such an order), as did his deputy, leaving then-Solicitor General Robert Bork to do the dirty work. By many accounts, this was the final straw that caused enough Republicans to break ranks that Nixon was eventually forced to resign.

Could this happen again? Perhaps.

As [Neal Katyal explained in The Post](#), a president who wants a special counsel removed has the power to make this happen. The regulations governing the special counsel were promulgated in 1999. These regulations provide that the special counsel can be fired only by the attorney general (or acting attorney general), that any removal must be for cause, and the cause must be provided in writing. Yet the president, as the head of the executive branch, retains the authority to order the attorney general (or, in this case, Deputy Attorney Rod J. Rosenstein) to take such an action. In the alternative, Katyal explains, “Trump could order the special-counsel regulations repealed and then fire Mueller himself.” Further, as [Josh Blackman explains](#), there’s an argument that the 1999 special counsel regulations would not bind the president anyway.

So what would happen if the president chose the audacious course of removing Mueller? [Jack Goldsmith explores this question at Lawfare](#). The short answer: a horrible mess. Among other things, Goldsmith predicts that Rosenstein would resign before executing such an order and that any effort would provoke a “backlash in Congress.” Goldsmith concludes:

If the crazy scenario that got me to this point in the hypothetical decision chain materializes, Congress would rise up quickly to stop the President, and the pressure on the cabinet would be enormous as well. If I am naive in thinking this, then we are indeed in trouble.

UPDATE: Here are slightly different takes by [Marty Lederman](#) and [Peter Shane](#). They both note — correctly in my view — that under the current regulations the President’s power to remove the special counsel is constrained in that the President would have to order the AG (or, in this case, the DAG) to do the dirty work. I agree, but the President can also fire an AG or DAG who refuses to follow such an order, and could likewise order rescission of the existing regulations.

As a practical matter, these constraints on the President’s authority to fire the special counsel are less legal than they are political. By forcing the President to act through the AG (or DAG) — and thereby risk a public resignation or having to fire a subordinate — the existing rules increase the potential political costs of taking such an action. As I see it, that’s exactly the point.

 **606 Comments**

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