

LINDSEY HALLIGAN'S GRAND JURY VIOLATION, WITH LOVE TO AILEEN CANNON

Most of this post lays out Jim Comey's vindictive and selective prosecution challenge. It is very tidy, providing little we didn't already know.

Aside from the confirmation that Lindsey Halligan was appointed under 28 USC 546, that's generally true of Comey's motion to dismiss because of Halligan's unlawful appointment, as well.

But it *feels* different, because it's a bid to win before the far right Supreme Court.

That starts with the memo that Sammy Alito wrote in 1986 – a memo conservative lawyer Ed Whelan has highlighted in his commentary against such an appointment. Back then, Sammy interpreted 28 USC 546 as prohibiting making serial Interim US Attorney Appointments, as Trump did in EDVA to install Lindsey the Insurance Lawyer.

Just three days after Congress enacted the 1986 law, the Office of Legal Counsel (OLC) within the DOJ issued a memorandum, authored by then-Deputy Assistant Attorney General Samuel Alito, interpreting the provision in precisely the same manner as Mr. Comey here. See Definition of Vacancy for the Purpose of Interim Appointment of United States Attorneys pursuant to 28 U.S.C. 546, as amended, Office of Legal Counsel (Nov. 13, 1986), <https://perma.cc/SD5Q7CPH>. Specifically, OLC concluded that while a “vacancy exists when the 120-day period expires under the amended section 546 and the President has either not made an appointment or the appointment has not been confirmed,” “it does not follow

that the Attorney General may make another appointment pursuant to 28 U.S.C. 546(a) after the expiration of the 120-day period.” Id. at 3 (emphasis added)

There’s the dickish comment from Bill Essayli, whose own appointment is being challenged in Los Angeles (before a Hawaiian judge).

Nor is the government’s gambit limited to this case. In several cases throughout the country, the government has sought to end run Congress’s framework in Section 541 and 546 before being rebuffed by courts. See Giraud, 2025 WL 2416737, at *1, *8 (detailing the Executive Branch’s perpetuation of “Alina Habba’s appointment to act as the United States Attorney for the District of New Jersey through a novel series of legal and personnel moves” and concluding that she “was not lawfully acting as the United States Attorney in any capacity” 120 days after the Attorney General first invoked her power under Section 546(a)); *United States v. Garcia, et al*, No. 25-cr-227, 2025 WL 2784640, at *3 (D. Nev. Sept. 30, 2025) (“The Nevada judges did not have an opportunity to exercise [Section 546(d)] power because, on the 119th day of Ms. Chattah’s term, the government purported to switch her appointment to the [Federal Vacancies Reform Act] and its longer term of service.”). In fact, when one interim U.S. Attorney was asked whether his term was “up at the end of this month” given subsection (c)(2)’s 120-day limit, he responded that “we’ve got some tricks up our sleeves.”¹⁵ This Court should reject the government’s machinations here.

¹⁵ See *The Glenn Beck Program*: Bill Essayli, at 44:14 (Jul. 22, 2025), <http://bit.ly/4nc6yck>.

But the real high point comes in the challenge under the Appointments Clause, where a team including Michael Dreeben cites liberally from *Trump v. US* and *US v. Trump* to argue that one of Trump's defense attorneys from his stolen documents case was unlawfully appointed under the very same logic Aileen Cannon used to throw out that case.

B. Ms. Halligan's Appointment Also Violates The Appointments Clause

As explained above, the Appointments Clause allows Congress to "by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments." U.S. Const., Art. II, § 2, cl. 2. The requirement that Congress participate in the appointment of inferior officers—either through Senate confirmation or through specifying an appointment procedure "by Law"—reflects the Framers' concerns about the Executive Branch's "manipulation of official appointments." *Freytag v. Comm'r*, 501 U.S. 868, 883 (1991) (citations omitted).

Here, Congress vested the appointment of interim U.S. Attorneys "by Law" in a "Head of Department[]"—the Attorney General—as well as in "the Courts of Law"—district courts. In so doing, Congress established a finely tuned statutory scheme for such appointments. See *supra* at 8-9. Because the Attorney General appointed Ms. Halligan in violation of that scheme, Ms. Halligan's appointment as an inferior officer is not authorized "by Law." And the "head of a department has no constitutional

prerogative of appointment to offices independently of the legislation of Congress, and by such legislation he must be governed, not only in making appointments, but in all that is incident thereto." *United States v. Perkins*, 116 U.S. 483, 485 (1886). The Attorney General's appointment of Ms. Halligan thus violates not only Section 546, but also the Appointments Clause. See *Trump v. United States*, 603 U.S. 593, 644-45 (2024) (Thomas, J., concurring) (citations omitted); *United States v. Trump*, 740 F. Supp. 3d 1245, 1263 (S.D. Fla. 2024).

[snip]

In light of these principles, the Supreme Court has invalidated judgments issued or reviewed by an improperly appointed adjudicator. In *Ryder v. United States*, 515 U.S. 177 (1995), for instance, the Supreme Court "reversed" the court-martial conviction of a defendant after he successfully challenged the appointment of the intermediate appellate judges who reviewed his case. *Id.* at 188. Likewise, in *Lucia v. SEC*, 585 U.S. 237 (2018), the Court set aside an agency adjudication "tainted with an appointments violation," making clear that a decision of an improperly appointed official cannot stand. *Id.* at 251.

Similarly, in *United States v. Trump*, 740 F. Supp. 3d 1245 (S.D. Fla. 2024), the court applied these principles when dismissing an indictment on Appointments Clause grounds because of a defect in the appointment of the prosecutor who secured the charges. The court concluded that "[b]ecause Special Counsel Smith's exercise of prosecutorial power has not been authorized by law," there was "no

way forward aside from dismissal of the Superseding Indictment.” Id. at 1302. Indeed, the government there did not even “propose an alternative course.” Id. The court reasoned that “[i]nvalidation follows directly from the government actor’s lack of authority to take the challenged action in the first place.” Id. at 1302-03.

That is, a team with a lawyer from Jack Smith’s team is citing Aileen Cannon’s disastrous opinion in Trump’s stolen documents case for the principle that for a lawyer to do what Lindsey the Insurance Lawyer did, she needs to be Senate approved.

Lindsey the Insurance Lawyer should know that (as should Deputy Attorney General Todd Blanche). After all, she was part of that “successful” defense team.

This is not to endorse this view. It is to say that if the sentiment behind Aileen Cannon’s dismissal of Trump’s stolen documents prosecution holds – if Clarence Thomas really wants to go there – than Halligan’s appointment, and all the work she did, must be thrown out, just as Jack Smith’s was.

The other vindictive and selective prosecution argument – that Donald Trump cannot simply appoint a US Attorney to take out his enemies is right on the facts but inapt on the legal precedents. But this one is designed to corner the right wingers on the Supreme Court.

And if that happens, this motion to dismiss goes further than the other – it puts Lindsey the Insurance Lawyer in an awkward spot. Because if she was not authorized by law to go before the grand jury, she violated grand jury secrecy rules.

Here, Ms. Halligan’s unlawful appointment tainted the structural integrity of the grand jury process. Absent Ms. Halligan’s unlawful title,

she would not have been able to enter the grand jury room, let alone present and sign an indictment. Indeed, the Federal Rules of Criminal Procedure allow only “attorneys for the government” to be “present while the grand jury is in session,” Fed. R. Crim. P. 6(d)(1), and define such attorneys to include only “attorney[s] *authorized by law* to conduct” grand jury proceedings, Fed. R. Crim. P. 1(b)(1)(D) (emphasis added). Those rules implement the longstanding principle “that the proper functioning of our grand jury system depends upon the secrecy of the grand jury proceedings”—a principle that “is ‘as important for the protection of the innocent as for the pursuit of the guilty.’” *United States v. Sells Eng’g, Inc.*, 463 U.S. 418, 424 (1983) (citations omitted). By limiting participation to government attorneys “authorized by law,” Rules 1 and 6 maintain the secrecy of the grand jury proceeding and reinforce that an unlawfully appointed attorney’s presentation to the grand jury undermines the structure of that proceeding. The fundamental error here thus allows a presumption that Mr. Comey was prejudiced, “and any inquiry into harmless error would [require] unguided speculation.” *Bank of Nova Scotia*, 487 U.S. at 257.

Which is weird, because she was trying to lecture Anna Bower about relying on NYT reporting from witnesses ... who are allowed to share their testimony before the grand jury.

This is the easier way to throw out this prosecution. It’s the same interpretation of the law that already got Alina Habba and Sigal Chattah disqualified from cases that won’t, however, sink the entire case.

But if that does happen, Lindsey may be in a bit

more trouble for even pretending to be a
government prosecutor.