

court's rationale could jeopardize the longstanding operation of the Justice Department and call into question hundreds of appointments throughout the Executive Branch.

II. The Department of Justice has properly funded the Special Counsel under a permanent indefinite appropriation that Congress enacted to “pay all necessary expenses of investigations and prosecutions by independent counsel appointed pursuant to the provisions of 28 U.S.C. 591 et seq. or other law.” Pub. L. No. 100-202, tit. II, § 101(a), 101 Stat. 1329, 1329-9 (1987) (28 U.S.C. § 591 note). The district court erroneously concluded that Sections 509, 510, 515, and 533 did not constitute “other law” that supported the Special Counsel’s appointment.

ARGUMENT

I. The Attorney General Possessed the Statutory Authority to Appoint the Special Counsel

The Appointments Clause requires presidential appointment and Senate confirmation for all principal officers, but permits Congress to “vest” the power to appoint “inferior Officers” in the President alone, courts, or a “Head[] of [a] Department[].” U.S. Const. art. II, § 2, cl. 2. As the district court recognized (Dkt. 672 at 2), the Special Counsel is an inferior officer. And he was appointed by the Attorney General, who is the head of a department. The only question presented here is whether Congress has vested the Attorney General, by law,