

December 18, 2017

Dear Richard --

I am writing in conjunction with several allied organizations to follow up on my complaint from more than four months ago¹ about the refusal of Secretary Steven Mnuchin, who had chaired the 2016 Trump Campaign's National Finance Committee², to recuse himself from Trump-Russia investigations.

Since I expressed grave concerns, the facts have only grown more alarming.

My earlier complaint highlighted troubling conflicts between the Secretary and the public interest in running two components of the Treasury Department, the Financial Crimes Enforcement Network (FinCEN) and the Internal Revenue Service (IRS).

Since that complaint, Secretary Mnuchin has installed a new person to run each component. In both cases the announcement was, as feared in my earlier complaint, a unilateral decision.

First, FinCEN.

The mission of FinCEN is "to safeguard the financial system from illicit use and combat money laundering and promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities."³

As Treasury secretary, Steven Mnuchin oversees FinCEN and has the authority to appoint its director.⁴

Paul Manafort, who was Chairman of the Trump presidential campaign when Secretary Mnuchin became National Finance Chair, was indicted by Special Counsel Robert Mueller for money laundering on October 30th, 2017.⁵ The Special Counsel's office has issued fifteen search warrants related to the Manafort indictment, obtaining more than 116,000 pages of financial records."⁶

FinCEN thus has obvious relevance to the Manafort case, as well as other potential legal cases against Trump and his team.

¹ Originally filed July 26th, 2017, resubmitted August 2nd, 2017.

² <https://www.politico.com/story/2016/05/trump-names-national-finance-chair-222846>

³ <https://www.fincen.gov/about/mission>

⁴ <https://www.fincen.gov/what-we-do>

⁵ See, e.g., <http://www.latimes.com/politics/washington/la-na-pol-essential-washington-updates-paul-manafort-and-business-associate-1509365548-htmlstory.html> and <https://www.axios.com/read-full-paul-manafort-indictment-2503806104.html>

⁶ <https://twitter.com/kenvogel/status/939205514399043584>

It is thus with alarm that I note that nine days after his fellow senior Trump campaign official was indicted for violations within the purview of FinCEN, Secretary Mnuchin announced the appointment of Kenneth A. Blanco as Director of FinCEN.⁷

Jamal El-Hindi had served as Acting Director of FinCEN since June 2016,⁸ a period of approximately 17 months before Secretary Mnuchin's announcement and nearly nine months since Mnuchin's confirmation as Treasury Secretary.⁹ Nothing in the announcement of the change in FinCEN leadership, nor contemporaneous press coverage, explains the timing of this change.

It is therefore extremely worrisome that Mnuchin announced a major shift in personnel for fighting money laundering barely more than a week after his former colleague was indicted for money laundering.

Mnuchin has had a conflict of interest, and the timing of this move makes that conflict of interest even more relevant and the action suspicious. If Blanco is the right person for the job, Mnuchin's non-recusal casts unwarranted suspicion upon Blanco. If the suspicions bear out, not only is Special Counsel Mueller's investigation threatened, but other disputes take on a new valence.¹⁰

Second, there has been a historic shift in leadership at the IRS.¹¹

John Koskinen's final day in office was November 9, 2017. Treasury Secretary Mnuchin had two reasonable options for filling a long-expected vacancy.

First, as anticipated by the Constitution,¹² before Koskinen departed Secretary Mnuchin and the president could have nominated a qualified Commissioner with the advice and consent of the Senate. Under such a scenario, there would be a Senate confirmed Commissioner.

Alternatively, as with all 16 Acting Commissioners of the IRS since the beginning of the Eisenhower Administration, outgoing Director Koskinen could have assisted Secretary Mnuchin in identifying a professional caretaker from amongst the ranks of career personnel at the IRS.¹³

Instead, Secretary Mnuchin has assigned one of his underlings, David Kautter, to run both the IRS and serve as his Assistant Secretary for Tax Policy.¹⁴

As noted by *The Intercept*, although Kautter "didn't register as a lobbyist," he had posted a bio online indicating that he has been "responsible for maintaining [Ernst & Young's] relationships with tax writing committees and staff on Capitol Hill, in the U.S. Treasury Department, the

⁷ <https://www.treasury.gov/press-center/press-releases/Pages/sm0213.aspx>

⁸ <https://www.fincen.gov/what-we-do> accessed 12/8/17.

⁹ <https://www.nytimes.com/interactive/2017/02/13/us/politics/steven-mnuchin-confirmation-vote.html>

¹⁰ <https://www.justsecurity.org/46324/treasurys-domestic-spying-turf-war/>

¹¹ See, e.g., <https://www.thedailybeast.com/trump-installs-tax-dodging-expert-as-the-head-of-the-irs>

¹² Article II, Section 2, <https://constitutioncenter.org/interactive-constitution/articles/article-ii>

¹³ <https://www.irs.gov/newsroom/previous-irs-commissioners-1955-2013> and <https://www.irs.gov/newsroom/previous-irs-commissioners-1862-1955>

¹⁴ See, e.g., <https://www.wsj.com/articles/treasury-taps-interim-irs-leader-as-john-koskinen-exits-1509030808>

Internal Revenue Service National Office” during a period of time in which Ernst & Young was compelled to pay a \$123 million fine to the very IRS that he is now running on a part-time basis.¹⁵

Beyond Kautter’s questionable qualifications to serve as Acting Commissioner of the IRS and the very questionable circumstances under which he is serving, many sober analysts have pointed out that having a political appointee tasked with simultaneously managing a high-intensity legislative fight over tax policy while running the IRS is deeply problematic.

Consider this from Steve Mankowski, president of the National Council of CPA Practitioners [NCCPAP], who told Tax Analysts he had misgivings about the double duty, noting that:

NCCPAP feels that working at both jobs, each with its own unique characteristics, will not allow either job to be performed efficiently. In addition, working on tax reform is a job that is actually contrary to the job of commissioner, whose primary tasks are the administration and enforcement of the tax code.¹⁶

Additionally, the IRS’ image for being a neutral administrator of tax laws and policies is endangered per Stoel Rives LLP’s Gregory Jenner, who was acting assistant secretary of the U.S. Treasury for Tax Policy in 2004. “I have no doubt that Dave [Kautter] would do the right thing but it’s a perception issue. [...] Here you have somebody holding a clearly political role and attempting to run an agency that is supposed to be apolitical. It’s a damned situation to put somebody in.”¹⁷

Lisa Zarlenga, who served as tax legislative counsel within the Office of Tax Policy from 2011 to 2015 and is now Steptoe & Johnson LLP co-chair of the tax practice group also noted that, “occasionally, you’ll have rules that the policy might take you in one direction and the administration and operation might take you in another direction.”¹⁸

That concern was echoed by the Urban Institute’s Howard Gleckman, who noted that,

The IRS must...must...be perceived as non-political. Republicans, of course, have been complaining for years about the Service’s alleged bias. Yet, Trump is taking someone who is already serving in a highly political policy job and giving him the IRS post. The dual roles will inevitably raise serious questions about the independence of the IRS.¹⁹

The perception of politicization is especially perilous in light of the Special Counsel investigation hanging over Trump, Secretary Mnuchin, and Paul Manafort. The various investigations into the Trump Campaign’s possible conspiracy with Russia will necessarily

¹⁵ <https://theintercept.com/2017/10/27/david-kautter-trumps-irs-chief-oversaw-accounting-firm-fined-for-illicitly-helping-wealthy-avoid-taxes/>

¹⁶ <https://www.politico.com/tipsheets/morning-tax/2017/11/03/well-know-what-223166>

¹⁷ <https://www.law360.com/articles/979130/irs-neutrality-may-suffer-under-new-irs-head-s-dual-role>

¹⁸ <https://www.law360.com/articles/979130/irs-neutrality-may-suffer-under-new-irs-head-s-dual-role>

¹⁹ <https://www.forbes.com/sites/beltway/2017/10/26/kautter-is-the-wrong-choice-as-acting-irs-commissioner/#69ad1d7657f3>

implicate IRS resources and records, as is common in white collar criminal investigations pursuing complicated financial connections.

For example, the Special Counsel's indictment of Paul Manafort is essentially a "tax and money laundering case."²⁰

In order for members of the Trump Campaign and Trump Organization to either be exonerated with credibility or for any potential criminal activity to be pursued appropriately and fully, the IRS' cooperation with prosecutors and congressional investigators cannot reflect any favoritism toward the president.

There is a credible report that Trump is "especially disturbed" that Special Counsel Mueller will be "able to access several years of his tax returns."²¹ Is Trump more comforted by the knowledge that Trump Organization and personal tax records are to be maintained by a deputy to his handpicked Treasury Secretary, who himself served as Trump's National Finance Chair in 2016?

Thus Kautter's Acting appointment occurs amidst:

1. No indication of a nominee, despite considerable advance warning and a Constitutional imperative to nominate all officers with the advice and consent of the Senate;
2. Kautter's personal ethical issues;
3. The inappropriateness of holding the two jobs currently assigned David Kautter at the same time, especially during a fight over the Trump administration's tax plan, and
4. Serious implications for the Special Counsel's investigation into illegal collaboration between Russia and a Trump campaign in which Secretary Mnuchin and the indicted Paul Manafort were key figures.

Given how events have only underscored the seriousness of the concerns I raised more than months ago, I would appreciate an update on your office's inquiry.

Thanks for your time and consideration,

Sincerely,

Jeff Hauser, Director, Revolving Door Project

CO-SIGNED

American Family Voices
CREDO
Demand Progress

²⁰ <https://www.nytimes.com/2017/10/30/us/politics/paul-manafort-indicted.html>

²¹ https://www.washingtonpost.com/politics/trumps-lawyers-seek-to-undercut-muellers-russia-investigation/2017/07/20/232ebf2c-6d71-11e7-b9e2-2056e768a7e5_story.html

March for Truth
People for the American Way
Public Citizen