

John Q. Barrett

*Independent Counsel Law Improvements for the Next Five Years*

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Abstract by Christine Parsadaian

This article finds the act creating the Office of Independent Counsel (OIC) is valuable and should be renewed. Nonetheless, the author argues that Congress first needs to significantly modify the current act to make the OIC more effective before renewing it. Initially, the article examines the creation of the OIC in the context of the Watergate Era to highlight its significance in regaining public trust in government law enforcement. Second, the author examines the relative success of the different types of Independent Counsel investigations and concludes that the statute has had a successful track record. Following, the author notes that even though the statute has been successful, it poses some constitutional questions worthy of recognition. For example, there is much debate as to whether Independent Counsels should be able to obtain expansion in their prosecutorial jurisdiction without approval from the Attorney General.

Next, the article highlights certain behavioral issues relating to the OIC that Congress should address prior to renewing the statute. In fact, the article makes numerous proposals regarding how Congress should change the statute to make it more useful. These suggestions all fit within the general framework of placing significantly more trust in the Attorney General. Included among the proposals is that that Congress should forgo its triggers to appoint an Independent Counsel. At the same time, the author believes that that the Attorney General should be able to request an Independent Counsel when necessary, avoiding the unnecessary roadblocks. The author argues that such measures place more trust in the Attorney General and will translate to fewer matters arising where an Independent Counsel is needed.