

IMPEACHMENT OF PRESIDENT
DONALD JOHN TRUMP

THE EVIDENTIARY RECORD
PURSUANT TO H. RES. 798

VOLUME XV

H. Res. 430, Authorizing the Committee on the Judiciary
to Initiate or Intervene in Judicial Proceedings to Enforce
Certain Subpoenas and for Other Purposes



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H. Res. 430

In the House of Representatives, U. S.,

June 11, 2019.

Resolved, That the chair of the Committee on the Judiciary of the House of Representatives is authorized, on behalf of such Committee, to initiate or intervene in any judicial proceeding before a Federal court—

(1) to seek declaratory judgments and any and all ancillary relief, including injunctive relief, affirming the duty of—

(A) William P. Barr, Attorney General, to comply with the subpoena that is the subject of the resolution accompanying House Report 116–105; and

(B) Donald F. McGahn, II, former White House Counsel, to comply with the subpoena issued to him on April 22, 2019; and

(2) to petition for disclosure of information regarding any matters identified in or relating to the subpoenas referred to in paragraph (1) or any accompanying report, pursuant to Federal Rule of Criminal

Procedure 6(e), including Rule 6(e)(3)(E) (providing that the court may authorize disclosure of a grand-jury matter “preliminarily to * * * a judicial proceeding”).

Resolved, That the chair of each standing and permanent select committee, when authorized by the Bipartisan Legal Advisory Group, retains the ability to initiate or intervene in any judicial proceeding before a Federal court on behalf of such committee, to seek declaratory judgments and any and all ancillary relief, including injunctive relief, affirming the duty of the recipient of any subpoena duly issued by that committee to comply with that subpoena. Consistent with the Congressional Record statement on January 3, 2019, by the chair of the Committee on Rules regarding the civil enforcement of subpoenas pursuant to clause 8(b) of rule II, a vote of the Bipartisan Legal Advisory Group to authorize litigation and to articulate the institutional position of the House in that litigation is the equivalent of a vote of the full House of Representatives.

Resolved, That in connection with any judicial proceeding brought under the first or second resolving clauses, the chair of any standing or permanent select committee exercising authority thereunder has any and all necessary authority under Article I of the Constitution.

Resolved, That the chair of any standing or permanent select committee exercising authority described in the first or

second resolving clause shall notify the House of Representatives, with respect to the commencement of any judicial proceeding thereunder.

Resolved, That the Office of General Counsel of the House of Representatives shall, with the authorization of the Speaker, represent any standing or permanent select committee in any judicial proceeding initiated or intervened in pursuant to the authority described in the first or second resolving clause.

Resolved, That the Office of General Counsel of the House of Representatives is authorized to retain private counsel, either for pay or pro bono, to assist in the representation of any standing or permanent select committee in any judicial proceeding initiated or intervened in pursuant to the authority described in the first or second resolving clause.

Attest:

Clerk.

June 11, 2019

CONGRESSIONAL RECORD—HOUSE

H4411

NOT VOTING—15

Arne	Grothelmer	King (IA)
Bost	Green (TN)	Kuster (NH)
Buck	Griffith	Long
Clay	Hastings	Ryan
Davis (CA)	Herrera Beutler	Wright

□ 1412

So the resolution was agreed to.
The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

THE JOURNAL

The SPEAKER pro tempore (Mr. BUTTERFIELD). Pursuant to clause 8 of rule XX, the unfinished business is the question on agreeing to the Speaker's approval of the Journal, which the Chair will put de novo.

The question is on the Speaker's approval of the Journal.

Pursuant to clause 1, rule I, the Journal stands approved.

REQUEST TO CONSIDER H.R. 962, BORN-ALIVE ABORTION SURVIVORS PROTECTION ACT

Mr. BUDD. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of H.R. 962, the Born-Alive Abortion Survivors Protection Act, and ask for its immediate consideration in the House.

The SPEAKER pro tempore. Under guidelines consistently issued by successive Speakers, as recorded in section 956 of the House Rules and Manual, the Chair is constrained not to entertain the request unless it has been cleared by the bipartisan floor and committee leaderships.

Mr. BUDD. Mr. Speaker, I urge the Speaker to immediately schedule this important bill.

The SPEAKER pro tempore. The gentleman is not recognized for debate.

AUTHORIZING THE COMMITTEE ON THE JUDICIARY TO INITIATE OR INTERVENE IN JUDICIAL PROCEEDINGS TO ENFORCE CERTAIN SUBPOENAS

Mr. MCGOVERN. Mr. Speaker, pursuant to House Resolution 431, I call up the resolution (H. Res. 430) authorizing the Committee on the Judiciary to initiate or intervene in judicial proceedings to enforce certain subpoenas and for other purposes, and ask for its immediate consideration.
The Clerk read the title of the resolution.

The SPEAKER pro tempore. Pursuant to House Resolution 431, the amendment in the nature of a substitute recommended by the Committee on Rules, printed in the resolution, is adopted, and the resolution, as amended, is considered read.

The text of the resolution, as amended, is as follows:

H. Res. 430

That the chair of the Committee on the Judiciary of the House of Representatives is author-

ized, on behalf of such Committee, to initiate or intervene in any judicial proceeding before a Federal court—

(1) to seek declaratory judgments and any and all ancillary relief, including injunctive relief, affirming the duty of—

(A) William P. Barr, Attorney General, to comply with the subpoena that is the subject of the resolution accompanying House Report 116-105; and

(B) Donald F. McGahn, II, former White House Counsel, to comply with the subpoena issued to him on April 22, 2019; and

(2) to petition for disclosure of information regarding any matters identified in or relating to the subpoenas referred to in paragraph (1) or any accompanying report, pursuant to Federal Rule of Criminal Procedure 6(e), including Rule 6(e)(3)(E) (providing that the court may authorize disclosure of a grand-jury matter "preliminarily to... a judicial proceeding").

Resolved, That the chair of each standing and permanent select committee, when authorized by the Bipartisan Legal Advisory Group, retains the ability to initiate or intervene in any judicial proceeding before a Federal court on behalf of such committee, to seek declaratory judgments and any and all ancillary relief, including injunctive relief, affirming the duty of the recipient of any subpoena duly issued by that committee to comply with that subpoena. Consistent with the Congressional Record statement on January 3, 2019, by the chair of the Committee on Rules regarding the civil enforcement of subpoenas pursuant to clause 8(b) of rule II, a vote of the Bipartisan Legal Advisory Group to authorize litigation and to articulate the institutional position of the House in that litigation is the equivalent of a vote of the full House of Representatives.

Resolved, That in connection with any judicial proceeding brought under the first or second resolving clauses, the chair of any standing or permanent select committee exercising authority thereunder has any and all necessary authority under Article I of the Constitution.

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Resolved, That the Office of General Counsel of the House of Representatives is authorized to retain private counsel, either for pay or pro bono, to assist in the representation of any standing or permanent select committee in any judicial proceeding initiated or intervened in pursuant to the authority described in the first or second resolving clause.

The SPEAKER pro tempore. The resolution, as amended, shall be debatable for 1 hour, equally divided and controlled by the chair and ranking minority member of the Committee on Rules.

The gentleman from Massachusetts (Mr. MCGOVERN) and the gentleman from Arizona (Mrs. LESKO) each will control 30 minutes.

The Chair recognizes the gentleman from Massachusetts.

GENERAL LEAVE

Mr. MCGOVERN. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days in which to revise and extend their remarks and insert extraneous material on H. Res. 430.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. MCGOVERN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this is a dark time. This Congress is being tested—in this case, not by a foreign adversary but by our own President, a President who is undertaking a relentless campaign of obstruction and stonewalling.

We have never seen anything like this. Never before, Mr. Speaker, has a President from either party so flagrantly ignored Congress' constitutional oversight authority and our Nation's separation of powers.

You don't have to take my word for it. President Trump has declared, "We are fighting all the subpoenas," and, "I don't want people testifying." These words make Richard Nixon look like an Eagle Scout.

His Attorney General, William Barr, is apparently more than willing to follow the President's command. He has refused to release the full, unredacted Mueller report and any underlying evidence until a compromise was finally reached yesterday. That is after the Judiciary Committee had already voted to hold him in contempt of Congress. Apparently, the Attorney General went from being America's lawyer to being the defense counsel for the President of the United States.

I hope the Justice Department acts in good faith on this new agreement. These are documents that Congress needs to see in response to Special Counsel Mueller's findings. But if they do not, and if the Attorney General holds back key information, then all options need to be on the table, including enforcing these subpoenas. That is in addition to the fact that some documents and testimony we deserve to obtain could very well fall outside the bounds of this agreement.

The Mueller report is just the tip of the iceberg. The President is using every trick in the book, including false claims of executive privilege, absolute immunity, and lack of legitimate legislative purpose, all to obstruct legitimate inquiries into matters that impact Americans' daily lives. This includes the President's attack on affordable healthcare coverage for millions of Americans, including those with pre-existing conditions; his family separation policy that has torn apart vulnerable immigrant families; his misappropriation of military funds for his offensive border wall; and his decision to roll back landmark civil rights protections.

This is exactly the sort of concentrated power in the hands of the few that the Founders intentionally prevented through the creation of the three separate but coequal branches of government, each branch with unique powers and responsibilities and each branch expected to act as a check on the power of the others.

But the President is trying to take this balance of power and centralize it

in one place, 1600 Pennsylvania Avenue. He is acting as though the law applies to every American but himself.

The President's strategy here is clear. Tweet by tweet, quote by quote, he has laid it bare for all of us to see.

The question is whether this Congress will have the courage to take a stand against it and whether we will confront it for what it is, an attack on the very notion of Congress as a co-equal branch of government. I can't speak for my friends on the other side of the aisle, but this Democratic majority will not allow this President to turn a blind eye to the rule of law.

That is why I introduced this measure, H. Res. 430. It is a civil enforcement resolution that will strengthen our hand in court as Congress tries to get the documents this administration is currently trying to hide, so we can uncover the truth and follow the facts, wherever they may lead.

The first part of this resolution follows past precedent used by Democratic and Republican majorities, this time to allow the Judiciary Committee to go to court to enforce subpoenas issued to the Attorney General and former White House General Counsel Don McGahn.

The second part reaffirms key language in House rules, making clear that every committee chair retains the ability to go to Federal court to seek civil enforcement of their subpoenas when authorized by the Bipartisan Legal Advisory Group. That includes those already issued, as well as any future subpoenas.

I know some of my colleagues on the other side will be quick to claim this resolution is unprecedented. To them, I would ask this: What is the precedent for an administration refusing to comply with any congressional oversight—no documents, no information, nothing? There isn't one.

We have never seen anything like this before, so we need an appropriate response like this because of this administration's constant obstruction.

I am proud that my fellow committee chairs quickly joined in cosponsoring this resolution, including Oversight and Reform Committee Chairman CUMMINGS, Foreign Affairs Committee Chairman ENGEL, Judiciary Committee Chairman NADLER, Ways and Means Committee Chairman NEAL, Intelligence Committee Chairman SCHIFF, and Financial Services Committee Chairwoman WATERS.

I urge all of my colleagues to join us. This deserves support from both sides of the aisle.

I know the silence from some of my Republican friends to what this President is doing has been deafening, but this moment demands you finally speak up and say enough is enough. This resolution is not about politics or partisanship. It is about defending the rule of law and the very notion of separation of powers.

The challenge here is so great that if we don't stand up to President Trump

today, then we risk losing the power to stand up to any President in the future.

I strongly urge my colleagues: Let's make clear that the law still matters, even in Donald Trump's America. We can do that by voting "yes" on this resolution and making clear that no one is above the law, not even the President of the United States.

Let's do right by the American people. Let's restore the dignity of this institution. Let's pass this resolution.

Mr. Speaker, I reserve the balance of my time.

The SPEAKER pro tempore. Members are reminded to refrain from engaging in personalities toward the President.

Mrs. LESKO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in opposition of H. Res. 430.

It is disappointing that we are here again debating a measure that will have absolutely no impact on the lives of our constituents. Instead of fixing pressing issues like the security and humanitarian crisis at our southern border, the Democrats continue their focus on influencing the 2020 election at taxpayer expense. Americans are tired of this witch hunt.

For nearly 2 years, Democrats claimed that the President colluded with the Russians to interfere in the 2016 Presidential election. After 22 months, 2,800 subpoenas, 500 warrants, 40 FBI agents, and spending \$35 million, Special Counsel Mueller concluded there was no collusion between President Trump and Russia and did not charge him with obstruction.

Yet, my Democratic colleagues continue to attempt to undermine the President of the United States because, all I can think of is, they haven't accepted the fact that he won the election. It is clear to me that the Democrats are trying to influence the 2020 Presidential election at taxpayer expense.

Americans have real problems that we can and should be tackling instead. In May, the U.S. Border Patrol apprehended a jaw-dropping 133,000 people at our southern border. That is only the people they caught. Yet, we are here debating subpoenas targeting the President, probably because it will provide Democrats free airtime.

This unprecedented resolution should not even be on the House floor today. It has never been done before in the entire history of the United States.

The House has only sued for documents twice before. In both cases, the individuals in question were first found in contempt of Congress at both the committee level and by the full House. This has not happened here.

On top of that, the relevant subpoenas seek material that includes grand jury materials that, by law, cannot be made public. The Democrats are asking Attorney General Barr to violate the law.

When my colleagues and I tried to improve this resolution, the Democrats blocked us at every turn.

I offered an amendment that would let the American people know how much money this resolution would cost taxpayers. Democrats blocked it. Republicans offered amendments to prevent taxpayer money from going to lobbyists, to disclose contracts with lawyers, and to disclose where this taxpayer money was coming from to fund this witch hunt. Democrats blocked each and every one.

One amendment in particular highlights the partisan political, media-grabbing motives of this resolution. Republicans offered an amendment requiring the Judiciary Committee chairman to certify that he made a good faith effort to negotiate with the Attorney General, but the Democrats blocked that amendment, too.

The Attorney General has been transparent, and the Department of Justice has attempted numerous accommodations, including just yesterday when the Department of Justice agreed to let members of the committee view an unredacted report excluding grand jury material, which, by law, cannot be released.

□ 1430

But even as the Attorney General has attempted to work with the Committee on the Judiciary, Chairman NADLER has moved at unprecedented speed, moving from a demand for an unredacted report to subpoena to this resolution in a matter of mere weeks. From the Democrats' actions and prior statements, it is difficult not to view the purpose of this resolution and this debate as anything but political.

Mr. Speaker, I reserve the balance of my time.

Mr. MCGOVERN. Mr. Speaker, I yield 2 minutes to the gentlewoman from California (Ms. WATERS), the distinguished chairwoman of the Financial Services Committee.

Ms. WATERS. Mr. Speaker, I thank the gentleman from Massachusetts (Mr. MCGOVERN) for yielding.

Mr. Speaker, I strongly support H. Res. 430, which authorizes litigation to compel Attorney General Barr to provide key evidence underlying the Mueller report and the unredacted report itself, authorizes a civil suit to compel Don McGahn to provide to the Committee on the Judiciary with documents and testimony, and, prospectively, allows committee chairs to bring civil actions on behalf of their committees to enforce their subpoenas without a subsequent full House vote when authorized by the bipartisan legal advisory group.

H. Res. 430 is key to ensuring that Congress is able to efficiently exercise its constitutional responsibilities in light of the unprecedented stonewalling by the Trump administration and a President who has openly said such things as: "We're fighting all the subpoenas," and, "I don't want people testifying."

Who does he think he is? A dictator? The committees have requested information that we are constitutionally

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entitled to, as a coequal branch of government, and that we need to fulfill our legislative and oversight responsibilities. In the Financial Services Committee, for example, we have subpoenaed documents from financial institutions, including Deutsche Bank and Capital One, as part of our investigation into the integrity of the United States financial system, bank safety and loan practices, and anti-money laundering policies, including as they apply to and involve the accounts of President Trump and family members. So, ladies and gentlemen, in another display of stonewalling, President Trump sued to prevent the banks from complying with the committee's valid subpoenas.

I will continue to support efforts to ensure that our critical oversight is not impeded.

Who does he think he is?

The SPEAKER pro tempore. Members are again reminded to refrain from engaging in personalities toward the President.

Mrs. LESKO. Mr. Speaker, I yield 7 minutes to the gentleman from Georgia (Mr. COLLINS), ranking member of the Committee on the Judiciary.

Mr. COLLINS of Georgia. Mr. Speaker, I rise in strong opposition to H. Res. 430, a resolution authorizing the Committee on the Judiciary to initiate or intervene in judicial proceedings to enforce certain subpoenas, and for other purposes.

This resolution is an assault on this body's constitutional oversight authorities. By proceeding in this unprecedented manner, the House is putting the judicial branch in an unfortunate position.

Never before has the House authorized the general counsel to sue without first exhausting all our constitutional remedies to gain compliance with our oversight demands. Proceeding in this manner risks weakening our ability to carry out our oversight responsibilities.

On May 8, the Committee on the Judiciary voted 24-16 to hold Attorney General Barr in criminal contempt of Congress. The committee did not pursue contempt against Donald McGahn. Mr. McGahn's case is unique, and I will address it in more detail later.

Contrary to press reports, Mr. Speaker, we are not acting today on the contempt citation reported by the Committee on the Judiciary. We are authorizing the House to sue the Attorney General, Mr. McGahn, and any other official or private citizen any committee chair deems contemptuous in the future.

This is a novel, untested, and risky proposition. I will give it to you this way, Mr. Speaker: The majority is definitely audacious in their request.

The media and the Democrats routinely rail against the President being quick to sue. Well, Mr. Speaker, that is exactly what the majority is doing. Having rushed to contempt, we are now bypassing that remedy altogether and going straight to court.

Constitutional scholar Jonathan Turley recently wrote, Democrats' litigation strategy "is clearly driven more by political than legal calculations."

This is the problem I have, Mr. Speaker: These tactics weaken the House, aggrandize the executive branch, and cede decisionmaking to the judicial branch.

This is a problem. The majority can mess up oversight however they want to. The majority can rush to judgment whenever they want to.

My chairman has subpoenaed most everything that moves, and it seems other committees are wanting to as well. But here is the problem: When you are rushing to this and you are taking it on grounds that are not legally sound—and which, by the way, at this same hearing where Mr. Turley was, all three of the Democrat witnesses also agreed that the subpoena of the Attorney General was not legal in the sense that it was asking him to do something illegal.

The other issue here is, when you practice proper oversight, we are getting documents on election results, we are also getting documents on immigration and others from this administration. Where the rub has come is in overbroad illegal subpoenas from these committees.

Now, they may want to screw it up now for their purposes, but I don't want it in the future, going forward, where this House's oversight ability has been tampered by a rush to judgment. Let's think about this institution more than our next headline.

This is a problem because it is uncertain here, Mr. Speaker, the House will even be granted standing in court since we have declined to exercise all of our constitutional remedies, namely, contempt, in its many forms.

This is not the only impediment facing Democrats. At every turn, as we have discussed in our minority views to the committee's contempt report, the majority refused to engage with DOJ in the requisite negotiations and accommodation processes.

During our markup of the contempt resolution, the chairman made several damaging admissions—this is the chairman of the Committee on the Judiciary:

First, he conceded the Attorney General cannot lawfully comply with his subpoena demanding grand jury material.

Second, he stated the subpoena was the beginning of a dialogue. I am not sure what first-year law student will believe that a subpoena is the beginning of a dialogue.

Third, he admitted the subpoena was intentionally broad to give the committee clout in court.

Again, I am not sure which Black's Law Dictionary we are looking up under "subpoena," but that is not part of it.

All along, the goal has been to get to court, not to get information and conduct legitimate oversight of Russian

interference or secure our elections. If Democrats were interested in these good government issues, they would have accepted DOJ's offer to review the nearly unredacted Mueller report.

Today, Mr. Speaker, the chairman, even, has not done so. The goal is to clearly haul the administration into court in an attempt to pacify a base rabid for impeachment.

When Congress exercises its oversight powers, it must take advantage of every offer of information from the other branch. It is disingenuous to decline the free information Democrats so strongly claim to want. It shows the majority does not want the information; they want a fight.

In addition to the subpoena being overly broad and requiring the Attorney General to violate the law to comply, the chairman failed to establish a valid legislative purpose for his demands. There are other avenues the chairman could seek to get the information he wants. Congress could pass a law granting itself an exemption to grand jury secrecy rules, but the majority has not brought that up.

The most alarming aspect of this action, however, is the unprecedented speed—a mere 44 days passed between the chairman's first request to the Attorney General and the date the committee held him in contempt. In stark contrast, 464 days passed from the date that Chairman Issa requested information from Attorney General Holder on Fast and Furious and the date the Committee on Oversight and Reform held him in contempt, 138 days for Harriet Miers and the date the committee held her in contempt.

The action the majority is authorizing today against Don McGahn, however, Mr. Speaker, is far more egregious for many reasons. Mr. McGahn is not the custodian of the documents the committee and the chairman demand. The White House is. Yet we are smearing a private citizen's reputation and dragging him into court—at taxpayer expense—in an effort to redo the Mueller investigation because the majority and the media didn't like the outcome.

Democrats again have failed to lay a foundation for any action against Mr. McGahn. Chairman NADLER has never formally objected to the President's protective assertion of executive privilege or other common law privileges asserted by Mr. McGahn.

Under Supreme Court precedent, the chairman must take this important procedural step to pursue further actions against a witness. The witness should be given a clear-cut choice between compliance and noncompliance, between answering the question and risking prosecution for contempt. Here, the witness is being hauled into court without proper notice.

Evidence of this glaring error is in the RECORD. On May 31, Chairman NADLER wrote Mr. McGahn's counsel and stated he did not agree with the White House or Mr. McGahn and offered to

continue negotiating, but the chairman also gave Mr. McGahn a deadline of June 7—this past Friday—to respond. Meanwhile, the Rules Committee noticed a markup of this resolution on June 6, one day before the deadline.

I think we are seeing the pattern here. This is a revealing error. But errors occur when you are pushing action through at light speed and ceding your power to the judicial branch. A court will decide whether the House has standing, whether the case is right, and whether the Congress is entitled to the information outside of an impeachment inquiry.

As also has been said, the propositions are a gamble. Here, Mr. Speaker, we are gambling with the power of a coequal branch. This approach is untested and can do significant harm to Congress' Article I authority.

Lastly, Mr. Speaker, I must make mention, the authorization of the general counsel to seek pro bono legal services circumvents the House ethics rules.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mrs. LESKO. Mr. Speaker, I yield an additional 1 minute to the gentleman.

Mr. COLLINS of Georgia. Mr. Speaker, those rules provide an exception for Members to bring civil action challenging the lawfulness of an action of a Federal agency or an action of a Federal official taken in an official capacity provided that the action concerns a matter of public interest rather than a matter that is personal in nature.

This resolution contravenes ethics rules by giving the general counsel the authority, in Mr. McGahn's case, to solicit a gift: pro bono level services. I am not sure that was the majority's intent, but the inconsistencies result when Democrats aim to rush resolutions through the House outside of regular order.

Mr. Speaker, the majority may wish to change the rules. This majority may wish to get to the finish line quicker. The majority may wish to circumvent everything that is present in this House—and we have seen a lot of it over the past 5½ months—but I wish they would take into account that they may not be the majority forever, hopefully, and if they mess up oversight of a coequal branch, it is on their hands.

That is what the vote for "yes" is on this resolution. That is why a Member of this body should vote "no" for the integrity of this House.

Mr. MCGOVERN. Mr. Speaker, let me just assure the gentleman from Georgia that there is nothing novel about this legislation. It is not novel because everything in this bill goes to the Bipartisan Legal Advisory Group, and that has been the case in the past.

What is novel, however, is a President of the United States who says "ignore subpoenas" and "we will not cooperate" and tells people not to testify. That is not only novel, it is shocking.

Mr. Speaker, I would just say to my friends on the other side: You are going

to have a choice today to either vote for this resolution and stand up for this institution and support the rule of law, or you are going to vote in a way that is going to be complicit with this President's obstruction and disrespect for this institution and disrespect for the rule of law. I urge you to vote with us.

The SPEAKER pro tempore. Members are reminded to refrain from engaging in personalities toward the President.

Mr. MCGOVERN. Mr. Speaker, I yield 4 minutes to the gentleman from Maryland (Mr. CUMMINGS), the distinguished chairman of the Committee on Oversight and Reform.

Mr. CUMMINGS. Mr. Speaker, I rise in strong support of this resolution.

Mr. Speaker, the Trump administration is engaged in one of the most unprecedented coverups since Watergate, and it is not just about Russia. It is so much broader than that. This coverup spans across numerous investigations, and it extends from the White House to multiple Federal agencies of government to completely separate outside parties.

The administration officials now question the fundamental basis of Congress to conduct oversight. They object to committee rules and precedence that have been in place for decades under both Republican and Democratic leaders, and they make baseless legal arguments to avoid producing documents and testimony. The Trump administration is challenging the very constitutionality of congressional oversight, and it is happening in broad daylight.

Several weeks ago, President Trump vowed, "We're fighting all the subpoenas." Since then, he has refused to work on legislative priorities such as infrastructure until Congress halts oversight and investigations of his administration. He wants us to forgo our responsibility under the Constitution as a condition of passing laws to help our constituents and his constituents.

The President's arguments are baseless. He suggests that all subpoenas that Congress puts out are partisan and somehow related to the Russia probe, but that is simply not correct. In the Oversight and Reform Committee, we have issued eight subpoenas: six of them are bipartisan and none of them are about Russia. They involve issues like the census, immigrant children being locked in cages and separated from their families, and the President's finances.

□ 1445

This entire year, the White House has not produced one document to the Oversight and Reform Committee. Let me say that again: In all of our investigations, the White House has not produced one single shred of paper in response to our requests.

The hurricanes in Puerto Rico, the White House has produced nothing. Security clearance abuses, the White

House has produced nothing. Efforts to transfer nuclear technology to Saudi Arabia, the White House has produced nothing. Hush-money payments, the White House has produced not a thing. Even on issues like spending taxpayer dollars to pay for private jets, the White House has produced absolutely nothing.

Over and over again, it does not matter what the topic is, the tactics are the same. This begs the question: What are we covering up?

Tomorrow, our committee will vote on whether to hold the Attorney General and the Secretary of Commerce in contempt of Congress for refusing to produce documents relating to the Census. Again, these subpoenas are bipartisan, and this issue has nothing to do with Russia. Yet, the Trump administration has delayed, stonewalled, obstructed, and challenged the authority of the Congress on even those questions.

I support today's resolution because it makes clear that in addition to seeking criminal contempt on the House floor, committees may seek authority to enforce their subpoenas directly in civil court actions. Nobody is above the law.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. MCGOVERN. Mr. Speaker, I yield an additional 30 seconds to the gentleman from Maryland.

Mr. CUMMINGS. Mr. Speaker, nobody is above the law, not even the President of the United States.

Today's resolution reaffirms that Congress has the independent authority under the Constitution to investigate waste, fraud, abuse, and wrongdoing so that we can pass laws that are effective and efficient on behalf of all of our constituents.

Mr. Speaker, I urge my colleagues to support the resolution.

The SPEAKER pro tempore. Before proceeding, Members are again reminded to refrain from engaging in personalities toward the President.

Mrs. LESKO. Mr. Speaker, I yield 2 minutes to the gentleman from Arizona (Mr. BIGGS), my friend.

Mr. BIGGS. Mr. Speaker, I thank the gentleman for yielding. I oppose this resolution.

The subpoena for Attorney General Barr is unenforceable on its face. It demands the full and unredacted Mueller report, including grand jury material that the Attorney General cannot lawfully disclose, and the Democrats know this.

In a hearing last month, Chairman NADLER admitted that Attorney General Barr could not lawfully release grand jury material. He therefore admitted that the Attorney General could not lawfully comply with the subpoena.

Instead, the chairman suggested that the subpoena is a starting point in negotiations. Rarely have I heard that term used with regard to a subpoena. In fact, I never heard it before that time.

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In the Judiciary Committee's hearing on executive privilege last month, one of the majority's own witnesses testified that "one of the categories of information presently sought by the committee appears so broad as to put the executive branch officials to a nearly impossible task. . . . The committee cannot in good faith expect compliance; accordingly, the burden is on the committee to substantially narrow this aspect of its request."

My friends talk about the rule of law, but the Democrats have admitted in a hearing in the Judiciary Committee that the subpoena was overly broad and that objects of the subpoena that are prohibited from disclosure, such as (e) material, were not subject to the subpoena. But they didn't fix their subpoena. They didn't issue a new subpoena. They didn't amend the subpoena. They just attempted to amend their contempt citation.

The defendant's confusion over what is subject to a subpoena is adequate evidence that the subpoena itself is legally deficient as being confusing and overly broad. A court will not be able to read the collective minds of our Democratic colleagues and will not expect such clairvoyance from the Attorney General nor from the former White House Counsel.

The administration is currently negotiating in good faith. We see that an agreement was reached just yesterday. The same Democrat, when discussing the assertion of executive privilege by the administration, stated, "These developments do not, however, relieve the committee of its obligation to continue to negotiate."

The SPEAKER pro tempore. The time of the gentleman has expired.

Mrs. LESKO. Mr. Speaker, I yield an additional 15 seconds to the gentleman from Arizona.

Mr. BIGGS. Mr. Speaker, just as the subpoena is overly broad and, quite frankly, unprecedented, as well as legally deficient, this resolution is also overly broad and unique in the annals of American history.

When the chairwoman from California referred to the President of the United States as a dictator, her language was rancorous and unparliamentary, but it seems to have been filled with projection, as this resolution provides unique authorities.

Mr. MCGOVERN. Mr. Speaker, I am proud to yield 1 minute to the gentleman from California (Ms. PELOSI), the distinguished Speaker of the House.

Ms. PELOSI. Mr. Speaker, I thank the gentleman for yielding, and I thank him for giving us this opportunity to protect and defend the Constitution of the United States, which is our oath of office.

Let me salute the chairs of the committees of jurisdiction who have led us down this path of great respect for law, precedent, and the oath we take: Congresswoman MAXINE WATERS, Congressman CUMMINGS, Congressman NADLER,

and Congressman RICHARD NEAL, and Congressman ELIOT ENGEL, all of whom have been fighting the fight and gathering the facts to protect and defend our Constitution.

The oath of office that we take is why we are on the floor today, to hold Attorney General of the United States Barr and former White House Counsel McGahn in civil contempt for their refusal to comply with Congress' subpoenas. We must follow the facts and uncover the truth for the American people.

At the birth of our democracy, amid war and revolution, Thomas Paine said the times have found us. We are here today because the times have found us. While we do not place ourselves in the same category of greatness as our Founders, we do recognize the urgency of the threat to our Nation that we face today.

This body has a solemn duty, Mr. Speaker, to protect and defend our democracy, honoring the oath we take and the Constitution that is the foundation of our freedom. That Constitution begins with our beautiful preamble, "We the People."

Immediately following those words of the preamble is Article I, establishing a Congress in which "all legislative Powers herein granted are vested."

The Founders conferred upon the first branch responsibilities that are sweeping in scope. We set an agenda. We hold the power of the purse. We write the laws that all of us are bound by, including the President of the United States and those who surround him.

Fundamental to those responsibilities is oversight of the executive branch and all the areas essential to the well-being of the American people.

Oversight is our institutional duty, to ensure against the abuse of power, protect the rule of law, and expose the truth for the people who are "the only legitimate fountain of power," in the words of James Madison.

To conduct that oversight, the Congress is both constitutionally obligated and legally entitled to access and review materials from the executive branch, which it can subpoena.

Yet, the President and the administration have shown an unprecedented and unjustifiable refusal to furnish Congress with that information. President Trump himself has said, "We're fighting all the subpoenas," and, "I don't want people testifying," and, "No do-overs."

His administration has employed every tool it can find to obstruct legitimate committee oversight, everything from witness intimidation to blanket stonewalling to spurious claims of executive privilege, absolute immunity, and lack of legislative purpose.

This obstruction violates decades of established legal precedent. Throughout our history, the courts have made absolutely clear that the House has the authority to follow the facts to uncover the truth for the American peo-

ple and that "the power of the Congress to conduct investigations is inherent in the legislative process."

Our oversight responsibility continues to be resoundingly affirmed in the courts again and again. Last month, the U.S. District Court for the District of Columbia ruled in the Mazars court decision that "there can be little doubt that Congress' interest in the accuracy of the President's financial disclosures falls within the legislative sphere."

That same week, the judge ruled in the Deutsche Bank case that Congress' "subpoenas are all in service of facially legitimate investigative purposes."

The administration's obstruction not only violates long-established precedent, but it also endangers our very democracy. We need answers on the many questions left unanswered by the Mueller report, which made clear that the Russians waged an all-out attack on our democracy, and the Mueller report documented 11 instances of obstruction from the White House itself.

This is a grave threat to our democracy, but the President calls it a "hoax" and refuses to protect our democracy. Why is that? We take an oath to protect our Constitution from all enemies, foreign and domestic. What the White House and the administration are doing is a danger and a threat to our democracy.

At the same time, the administration's campaign of stonewalling extends far beyond the Mueller report. The administration is obscuring the truth behind its disastrous policy decisions, from attacking Affordable Care Act coverage for millions of Americans, including those with preexisting conditions, taking it to court to overturn it while saying to the American people that it supports preexisting conditions coverage; to tearing apart vulnerable immigrant families at the border; to stealing military funds for an ineffective, wasteful border wall; to rolling back key civil rights protections for women, LGBTQ Americans, and people of color. The list goes on and on.

In court, they also tried to defend their abuse of power when it comes to the Census, which the Constitution is very clear about, that every 10 years the people of the country will be enumerated. They want to put a citizenship phrase in there to put a chilling effect on our getting an accurate count.

The well-being of the American people and the integrity of our democracy are imperiled by this brazen behavior. Senator McCONNELL declares "case closed," enabling this campaign of blanket, unprecedented obstruction.

We see the obstruction in this House to trying to uphold our proceedings, but we have the votes to proceed. The United States Senate has a responsibility to protect and defend the Constitution, but they are ignoring that. As Members of Congress, we have a responsibility to honor our oath of office

and strengthen the institution in which we serve for the people.

We have a responsibility under the vision of our Founders and the text of the Constitution to ensure that the truth is known. No one is above the law. Everyone will be held accountable, including the President of the United States.

The people's House will continue to fight to make the truth known for the American people and will defend Congress' role under Article I.

I urge a strong bipartisan vote for this resolution to hold Attorney General Barr and former White House Counsel McGahn in civil contempt for their refusal to comply with Congress' subpoenas and to honor the oath of office that they take.

I urge an "aye" vote.

Mrs. LESKO. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. McCLINTOCK).

Mr. McCLINTOCK. Mr. Speaker, there is a reason for the abusive rhetoric from the left. For 2½ years, they peddled a monstrous lie that Donald Trump is colluding with a hostile foreign government. They concocted it with a phony dossier commissioned by the Clinton campaign and promoted by the highest officials in the FBI, our intelligence agencies, and the Justice Department, first in a failed attempt to interfere with the 2016 Presidential election and then to undermine the constitutionally elected President of the United States.

Now, despite spending \$25 million on an outrageously biased team of partisan zealots assembled by Mr. Mueller, which initially included the now-infamous Peter Strzok and Lisa Page, and using some of the most abusive prosecutorial tactics ever employed in this country, they could find no evidence to support the lie.

□ 1500

So what to do?

They had to think up another lie and think it up quick. So now we hear cries of obstruction and coverup. Good luck with that.

Coverup of a crime that never happened?

Obstruction, by turning over every document Mueller requested and even waiving executive privilege to allow the White House counsel to testify?

Now, Mr. Speaker, you compare that to Hillary Clinton's willful destruction of 30,000 emails under subpoena and you get a sense of the double standard involved here.

This is a desperate scavenger hunt to salvage their false narrative, and their time and the Nation's patience is running out. The other shoe is about to drop. Broad investigations are now well underway and will soon reveal how this lie was perpetrated and promoted. Two governments interfered in our elections, the Russians through ham-handed propaganda, and the Obama administration by turning the most terrifying powers entrusted to our government against our political process.

The reckoning is coming. As Longfellow said:

The wheels of the gods grind slow, but they grind exceedingly fine.

Mr. MCGOVERN. Mr. Speaker, I yield 2 minutes to the gentleman from Tennessee (Mr. COHEN).

Mr. COHEN. Mr. Speaker, this is an opportunity for Congress to reassert itself as an equal branch of government. The fact that it is supposed to be three equal branches of government is not totally accurate.

When we came up with the Constitution, we decided that we didn't want to have an autocratic king rule us. That is why we had a revolution. When the men met to write our Constitution, they made Congress Article I. There was a reason they made Congress Article I, because the Congress represents the people. It is not a king, it is not an autocrat, and it is not a despot. It is the Representatives of the people who make the laws. We are supposed to really be the embodiment—and we are the embodiment—of the American people.

This President has thumbed his nose at the Representatives of the people by not complying with lawful requests for documentation and lawful requests for testimony for Congress to do its constitutionally delegated purpose of oversight of the executive branch and laws that are necessary for the betterment of this Nation.

This is about time Congress did act. I am proud of Congress for bringing these bills, and I am shocked at the opposition for not wanting the people's House—their House, their legislative body—to stand up for future Congresses as well as this Congress for the rightful power that it deserves to do oversight and perform its functions with the best possible witnesses and testimony and materials that could aid it in its efforts.

I support the contempt citations. I condemn the parties that have thumbed their noses at us, subpoena under law, they are supposed to arrive with documentation and appear to testify. If they object, they can object there and then, not just disregard Congresses' subpoenas that are lawful.

Mrs. LESKO. Mr. Speaker, I yield 2½ minutes to the gentleman from Georgia (Mr. WOODALL).

Mr. WOODALL. Mr. Speaker, I thank my friend on the Rules Committee for yielding.

Mr. Speaker, I have been listening to the debate intently. I don't disagree with much of what my friend from Tennessee had to say. It is a bad habit that both parties have gotten into over the decades of my lifetime putting party above Article in terms of judicial oversight, executive branch oversight, and even our responsibilities here, such as declaring war.

But what you have not heard here today, Mr. Speaker, and what you will not hear is why the passage of this resolution advantages us in any way. There is not one piece of information

that the Speaker of our House—our Speaker—just came and asked for that we are not empowered to request today.

The difference, Mr. Speaker, is if we pass this resolution, rather than the House requesting this information—as has historically been true—we would begin to request information one committee chairman at a time.

Does that advantage us in Article I, going to court one committee chairman at a time, or are we advantaged when the Speaker speaks on behalf of us all?

I don't know the answer, Mr. Speaker. I am not a legal scholar, and in the Rules Committee where we had original jurisdiction on this, we did not call any legal scholars to help us answer that question. In the Judiciary Committee they did not call any legal scholars to help to answer this question.

Mr. Speaker, I tell you there is not a Member of this institution on either side of the aisle who cares more about Article I and our exerting the responsibilities the Constitution gives to us and our constituents expect us to do than I do. Perhaps there is someone in here who cares as much, but there is no one who cares more.

Are we disadvantaging the institution for life by taking what has traditionally been the responsibility of our Speaker to do on behalf of all of us and putting it in the hands of committee chairman?

We don't know, and anyone who tells you that they do isn't telling you the truth. We are going to continue to argue about the White House and what they have turned over and what they didn't turn over and what they ought to turn over, Mr. Speaker. That is not what this bill does today. There is not one piece of information that is requested that we do not have the authority to request today. Let's not move in ways that disadvantage us for generations to come.

Mr. MCGOVERN. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Maryland (Mr. HOYER), who is the majority leader.

Mr. HOYER. Mr. Speaker, I am pleased to follow the gentleman from Georgia.

I have a card in my hand. This is a Member's identification. There is no designation of party on this card. This card designates 435 of us when we are at full complement as Members of the Congress, the people's Representatives. I urge all my colleagues to use this card in a few minutes on behalf of the people and on behalf of this institution.

Mr. Speaker, when Democrats won the majority in this House, we did so on a promise to the American people to hold the executive department accountable. That is our responsibility. The Constitution gives us that responsibility, and we swear an oath to uphold the Constitution. That is what the committees have been doing, and it is what the whole House is doing today.

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Now, the previous speaker said we have the right to ask for any information. That is accurate. What he did not then say is we have asked, and we have been refused. Not only have we been refused in the particular, we have been refused in the general because the President of the United States has directed his people not to give us any information and not to respond to any subpoenas, whatever the rationale may be.

Why?

Because he believes the House of Representatives is not acting properly.

Mr. Speaker, you imagine anybody who doesn't want to give us information would say, I am not going to give it to you because you are not asking properly?

Of course, that is what they do: and the House, on behalf of the American people, would be unable to perform its constitutional duty. This is not political. It is constitutional. It is about separation of powers. It is about responsibility. It is about accountability.

The House is exercising its responsibility to uncover all the facts and discover the truth on behalf of the American people. We represent, each us, about 750,000 people. We are not asking on our own behalf. We are asking for the people, so that the people have the information they need in a democracy to make the decisions that they are called upon to make in a very solemn exercise we call voting.

Attorney General Barr and former White House Counsel McGahn have both refused to respond to subpoenas to testify before the House, and the Attorney General refuses to allow Congress to see the full and unredacted report by the special counsel, Mr. Mueller. You can see entire pages blacked out, Mr. Speaker.

The Attorney General's efforts to prejudice the conclusions of that report before it is released, as he did, and his public mischaracterization of its conclusions are, in my opinion, evidence of the contempt with which he refuses to answer questions and respond to subpoenas. It seems contemptuous as well of the basic principles of the rule of law and checks and balances.

The American people deserve to know the full extent of Russia's efforts to interfere in our elections and subvert our democracy.

Mr. Speaker, you didn't have to listen too closely to Bob Mueller to understand that he believed that there was much more to be found or to miss the fact that he said to Congress: Do your duty and make sure the American people know the facts.

The American people deserve to know whether the President or anyone in his administration or inner circle of confidants were involved and tried to cover it up.

Now we have been accused of doing awful things, but I remember watching conventions where they said, "Lock her up, lock her up." Flynn—General Flynn—who was the National Security Advisor said: "Lock her up."

Well, the fact is they locked him up, and many others who were associated who lied about their involvement with the Russian Government and, yes, with other foreign countries. So there is reason for the Congress to want to get to the bottom of this serious invasion of our election process.

Mr. Speaker, I urge my colleagues on both sides of the aisle to stand up for our Constitution and vote for this resolution. I thank the chairman of the Rules Committee, Mr. MCGOVERN. I thank Chairman NADLER, Chairman SCHIFF, Chairman CUMMINGS, Chairman NEAL, Chairman ENGEL, and Chairwoman WATERS, all who have jurisdiction over various facets of the information that is needed, and I thank the members of their committees for their hard work to conduct necessary oversight on behalf of the American people.

Mr. Speaker, that is what this vote is about. I presented that card. It has no party designation on it. It just has a designation of us—each of us—as Representatives of the people. Let us make sure that today we vote for the people and stand up for our Constitution, for this House, and for the rule of law.

Mrs. LESKO. Mr. Speaker, I yield 2½ minutes to the gentleman from Ohio (Mr. CHABOT), who is my fellow Judiciary Committee member.

Mr. CHABOT. I thank the gentleman for yielding, Mr. Speaker, and I rise in opposition to this resolution.

It seems to allow Democrats on the Judiciary Committee to go to essentially whatever court they want to get a court order to get whatever documents they want—even grand jury documents and those that relate to our national security—all because they don't want, or are afraid to, really, hold Attorney General Barr or former White House Counsel Don McGahn in contempt of Congress, just as they are afraid to institute impeachment proceedings against President Trump or accept the fact that the Mueller investigation found that there was no collusion and Attorney General Barr found no obstruction.

They just can't get it through their heads that that is the case, and they don't want to focus on the real issue threatening our democracy which is that Russia actually attempted to interfere in our national elections back in 2016 while Barack Obama—not Donald Trump—was President, and the Obama administration did absolutely nothing about that.

They really don't seem too concerned that the Russians or another foreign entity might attempt to do so again in 2020. That is what they ought to be using their oversight powers—very powerful things the power that the majority has—they ought to be using it about that, not this charade.

□ 1515

How many documents have the Democrats requested that relate to Russian interference in our elections? None. How many hearings? Zip. How

many Obama-administration officials and others connected to Russia's efforts have they subpoenaed to testify before the Judiciary Committee? Zero.

By continuing with this fake impeachment, the Democrats are doing the American public a disservice. My Democratic colleagues ought to be embarrassed.

Mr. MCGOVERN. Mr. Speaker, let me correct the RECORD in response to the gentleman of Ohio. The Russians didn't attempt to interfere in our election; they did interfere in our election.

And, if my friends read the Mueller report, they would realize they interfered in the election to help Donald Trump get elected.

Mr. Speaker, I yield 3 minutes to the gentleman from New York (Mr. NADLER), the distinguished chair of the Committee on the Judiciary.

Mr. NADLER. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, when a congressional committee issues a subpoena, compliance is not optional. We expect witnesses to testify when summoned. We expect the administration to comply with subpoenas and to provide us with the materials we require to do our jobs.

Of course, there may be differences between the Congress and the executive branch as to what information can be produced on a timely basis. When those differences arise, we are required to seek a reasonable accommodation.

We first requested access to the full Mueller report and the underlying evidence on February 22. After refusing for almost 4 months, the Department of Justice, in the last few days, has finally agreed to permit us to view the special counsel's most important files.

We are hopeful this will provide us with key evidence regarding allegations of obstruction of justice and other misconduct.

Given this potential breakthrough, we will hold the criminal contempt process for Attorney General Barr in abeyance for now.

But President Trump has blocked other key witnesses from testifying before the Judiciary Committee, including his former White House counsel Don McGahn, whose account of the President's actions was featured in the Mueller report.

The President has claimed absolute immunity for critical witnesses to prevent them from even showing up. He has invoked executive privilege to prevent us from seeing documents that stopped being privileged long ago, if they were ever privileged to begin with.

He has done the same in response to Congress' important work unrelated to the Mueller report, and he has ordered the agencies not to cooperate with even our most basic oversight requests.

This unprecedented stonewalling by the administration is completely unacceptable. The committees have a constitutional responsibility to conduct oversight, to make recommendations to the House as necessary, and to craft

legislation that will curb the abuse of power on full display in the Trump administration.

This is why it is important that the Judiciary Committee be able to act in such matters using all of our Article I powers, as contemplated in this resolution and described in both the Rules Committee report and the House Judiciary Committee's contempt report.

Now, I heard what the gentleman from Georgia (Mr. WOODALL) said a few minutes ago, and he is exactly right. This resolution gives committee chairs the power, with the approval of the Bipartisan Legal Advisory Group, to go to court on behalf of the House to enforce our subpoenas.

This has not been done before, but neither have we ever seen blanket stonewalling by the administration of all information requests by the House. We have never faced such blanket stonewalling.

The President himself said—and they have been as good as their word—they will oppose all of our subpoenas.

We must go to court to enforce the subpoenas without a separate floor vote each time if we are going to enforce our subpoenas and reject the arrogant assumption of power by the administration and denigration of the power of the House and of the Congress.

We cannot afford to waste all the floor time every single time the administration rejects one of our subpoenas, which is every time we issue a subpoena.

That is why we must pass this resolution.

Mr. Speaker, I urge my colleagues to support this resolution so that we can get into court and break the stonewall without delay.

Mrs. LESKO. Mr. Speaker, I yield 1 minute to the gentleman from California (Mr. MCCARTHY), our Republican leader.

Mr. MCCARTHY. Mr. Speaker, I thank the gentlewoman for yielding.

Mr. Speaker, Special Counsel Mueller officially ended his investigation several weeks ago. His office is closed. Because of Attorney General Barr, his report is public.

And his findings are very clear: No collusion and no obstruction. This is the bottom line of the Mueller report.

But, Mr. Speaker, Democrats refuse to accept it. Mr. Speaker, even the chairman of the committee refuses to go read the portion that he is allowed to read, only six lines. He refuses to read it, but he wants to come here today.

They continue to believe their worst conspiracy theories about the President, despite all the evidence to the contrary.

Mr. Speaker, it is even reported in newspapers that, in the campaign to become chairman of the Judiciary Committee, one said he campaigned for the position because he would be the best with impeachment.

Mr. Speaker, even on the floor of this House, there were more than 60 Mem-

bers on the other side of the aisle who voted for impeachment before the Mueller report was ever presented to the public.

At its core, H. Res. 430 is just a desperate attempt to reinitiate the Mueller investigation. That is why I urge my colleagues to oppose this resolution.

It does not strengthen Congress' oversight powers, contrary to what you may hear from the other side, Mr. Speaker. Fundamentally, it is an impeachment effort in everything but name.

Mr. Speaker, just look at the unnecessary contempt citation against Attorney General Barr. Less than a month after Barr received the Mueller report, Mr. Speaker, Chairman NADLER issued a subpoena that would have required the Attorney General of the United States of America to break the law.

That is not my opinion. Let's be very clear whose words those are: Jonathan Turley's. Mr. Speaker, probably everybody in this body not only knows who Jonathan Turley is; he has, probably, the utmost respect. He is one of the most respected legal scholars in this country.

Now, he told the committee, Mr. Speaker:

You have to tie your request carefully to your authority to demand information . . . if Bill Barr had actually complied with the subpoena as written, he would have violated Federal law.

If he would have complied, he would have violated Federal law.

Mr. Speaker, that is why we are here. Not only, Mr. Speaker, does the chairman of that committee ask the attorney general to break the law or he will try to hold him in contempt; he won't even go read the report.

On May 8, only a few weeks after the first subpoena was issued, House Judiciary Democrats voted to hold A. G. Barr, the Attorney General of the United States, in contempt.

Why would they vote to hold him in contempt? Because they were so angry that the Attorney General wouldn't break the law. They wanted him to break the law; then he won't be held in contempt.

In a May 24 letter to the Attorney General, Chairman NADLER offered, for the first time, to negotiate and narrow the scope of his subpoena request. Then, you know what? He changed his mind.

Yesterday, the Department of Justice reached an agreement with the Judiciary Committee to turn over documents related to the Mueller report.

Now, if the public is watching, this just looks so disorganized. You wonder, from that committee, Mr. Speaker, wouldn't they know better than to ask the Attorney General to break the law?

Mr. Speaker, wouldn't you know that, when you get to this point in a career, you wouldn't be so upset that someone just doesn't do exactly what you want—and you ask them to break

the law—that you would vote to hold them in contempt and force your side of the aisle just to vote that way.

That is not how it has happened in this body before. If the public wants to see a good example of congressional oversight, then let's look at something that is comparable: the House's contempt vote against Attorney General Holder in 2012.

The House Committee on Oversight and Reform took two important actions before suing in Federal court. First, it negotiated with Attorney General Holder in good faith for 15 months—not a few days. It never asked him to break the law either.

After narrowing the scope of its original subpoena, and only after extensive back-and-forth negotiations failed, did it vote to hold him in contempt.

Second, it got the full House to vote on it and approve—you know what—a bipartisan contempt.

Now, I am not sure why the Committee on the Judiciary, Mr. Speaker, would not know this, but I did a little research because I was here during that time. You know why they didn't realize it was the best way to do it and it was bipartisan? Because, Mr. Speaker, a lot of them stormed outside of the Chamber.

Yep. You heard me right. Even though 17 Democrats voted in favor of the criminal contempt resolution against Holder and 21 voted to enforce civil citation, a number of them stormed outside and protested, took their ball and ran home. Mr. Speaker, I guess, to the public, it looked like they had just thrown another fit.

Now, that is pretty significant. As many of you remember, it was contentious. I remember, Mr. Speaker, watching then-Minority Leader PELOSI, Minority Whip HOYER, and Congressman NADLER lead 100 Democrats off the House floor to protest the vote.

Mr. Speaker, you won't see that on our side. We believe in the rule of law. Mr. Speaker, we would have done the exact same thing the Attorney General did, that Jonathan Turley said, that you would have had to break the law to try to appease somebody's own personal vendetta.

The idea, Mr. Speaker, that someone would run for a position to say that they would be best to impeach somebody and even vote to impeach without even having a report and then, when you get a report and you could go down and read just those six lines that you want to complain about, but you won't—the same person, Mr. Speaker, that would run outside and say: I got elected to Congress, but I am going to put and I am going to go outside.

Mr. Speaker, that may be the same person that would want to bring this to the floor today.

But what is so different about today than all the others? Well, we are doing something we have never done before. We are doing something that is going to take the power away of every Member in this body and give it to a select few.

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Mr. Speaker, if this vote passes today, Members of this body are going to say: Don't bring it here and let me represent my own people and vote about going to court. Let's just give it, really, to three people. Let's give it to Speaker NANCY PELOSI, Majority Leader HOYER, and to the majority whip. Because that is what BLAG is.

I know the courts are going to sit there and say that is not what Congress is supposed to do. Congress has never done that before. But, you know what? If this new majority thinks all they want to do is make an attorney general break the law, I guess they could break every rule, every history, every point of representation there is inside this body.

Did we wonder if this would happen? Do we wonder why you wouldn't take the months, as they have shown in the time before, and actually come to a bipartisan conclusion?

I think the plan was already written. I don't know if people can talk about the word "patient" because, Mr. Speaker, I remember Congressman HANK JOHNSON of the Rules Committee—this is the Speaker's committee, so everybody understands correctly, that is just appointed by the Speaker on the majority side—said, Mr. Speaker: "Donald Trump will stand for reelection again in a very short period of time, and we don't have 400 days to wait. . . ."

So, don't care about the rule of law. Don't care about asking him to break the law. Just break every historical trend and try to take the power away from millions of Americans and from the Members of Congress who represent them here.

I didn't know today would come. Mr. Speaker, I didn't know if someone would go this far.

I didn't know, just because someone, Mr. Speaker, despises somebody else, that an election didn't turn out the way of the desire—Mr. Speaker, I have been on losing sides before, but I would never think I would break the law just because of losing an election.

I would never think of asking somebody in as high an office as the Attorney General of the United States of America to not give due process, to come to the floor and strip the power of 430 Members and put it in a select few.

Mr. Speaker, I have to be honest. I don't put anything past what this new desire is about.

□ 1530

Mr. Speaker, Democrats say we are in a constitutional crisis, and they are right, but not because of Attorney General Barr. The constitutional crisis is this: When Democrats can't win, they change the rules.

I just heard it on the floor, Mr. Speaker, that, yes, from the other side of the aisle, said this has never been done before, and, yes, this is nothing this House has ever desired to do. But it is also no way to govern.

The American people deserve a majority that is serious about coming up with solutions, not subpoenas. There are plenty of important challenges that we can be working on to solve.

Just yesterday, Mr. Speaker, I opened The New York Times. It is not a paper that I think I always agree with, but it had an editorial not for the first time, but for the second time, and it was talking about the crisis on the border.

As I read this editorial, I found myself agreeing with it greatly. When I read it, it talked about the border, talked about Washington needing to stop dithering and do something about it.

I looked and wondered what committee would be most responsible for this challenge? Lo and behold, it was the Judiciary. So I turned it on in hopes that I would see a hearing, maybe I would even see a markup.

No, Mr. Speaker, who did I see? I saw John Dean. John Dean, who pleaded guilty in Watergate. The same individual who has put more than 900 tweets out against the President, many before any Mueller report came forth. He was the expert witness—the same individual who is paid by CNN, the same individual who said the Presidency of George Bush was worse than Watergate.

I guess this new majority will go to no end. It doesn't matter if the facts don't go where they want; just change the rules.

I wonder, all these new freshman Democrats, Mr. Speaker, when they swore in to uphold the Constitution, does that mean trying to make the Attorney General break the law? Does that mean giving their power away to a select few?

There is a crisis on the border. The New York Times knows it. The country of Mexico knows it. I think almost everybody in America knows it except, Mr. Speaker, I guess, this majority.

The committee of responsibility is more concerned about bringing somebody in who pleaded guilty in Watergate, who makes their money off, Mr. Speaker, writing books claiming every Republican President there is is worse than Watergate and then asking the Attorney General to break the law.

That is not a legacy I would be proud of. It is not a legacy I would want to be a part of.

But, Mr. Speaker, I will say on this floor: I will vote against taking the power away, even the power away from people on the other side of the aisle. I won't lead a protest, and I won't go outside, and I won't take my ball, and I won't run home. I believe in the rule of law.

Mr. Speaker, I had the responsibility and the opportunity to go read the redacted portions of the Mueller report, just as some on the other side of the aisle could. It is just six lines. Not that I think it was just my responsibility, but as an elected official I thought it was a responsibility, so I went. But,

Mr. Speaker, the people leading this today, they have not. They think they know better.

I don't know if they know better, but one thing I do know: They are changing the rules of the House simply because they cannot win. That is not the American way.

Those are the reasons why we stand up. Those are the things that America unites behind, the rule of law. This will not be a day that is proud. This will not be a day that, when they look back in history, the individuals who vote for this will talk about.

It is one when they get asked the question later in life, Mr. Speaker, is there something they regret, they will regret that emotion overtook them. They will regret their own personal dislike drove them.

I am not sure if they are proud of the day when they storm out of the building, even though there is a bipartisan vote here. But I guess that same emotion, the same, Mr. Speaker, lack of ability to actually look at the rule of law and work toward something instead of just changing the rules because you can't have your way, that is what today is about.

The worst part of it all is removing the power of individual Members and putting in a select three. But then again, Mr. Speaker, when you study history and forms of government, that is what socialism is all about.

Mr. MCGOVERN, Mr. Speaker, I yield myself such time as I may consume.

The distinguished minority leader began by saying that the Mueller report makes it clear that there was no collusion and no obstruction. Maybe that is what you would conclude if you just read Barr's summary which tried to cover up what the Mueller report said, but I would urge the distinguished minority leader to read the report. I am happy to lend him my bifocals if he has trouble reading it.

But the report doesn't say that. It doesn't say no collusion. And on the issue of obstruction of justice, it says: If we were convinced that he, the President, did not commit a crime, we would have said so.

That is what the report says. And I would remind my colleagues that obstruction of justice is a crime.

Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. TED LIEU).

Mr. TED LIEU of California. Mr. Speaker, the issue today is very simple. It is simply about the right of the American people and Congress to get information. That is it.

All this resolution does is allow us to enforce congressional subpoenas. These are documents and witnesses we want, and it allows us to go to Federal court to enforce it. That is all this resolution does.

Why are Republicans so scared of this resolution? Because they know we are going to win in court. We have won three times against the Trump administration.

But why do we even have to go to court to do this? Because the Trump administration is engaging in unprecedented obstruction. And it is not just about the Mueller report; it is about all areas.

So, for example, right now, the Trump administration is suing to eliminate healthcare coverage for people with preexisting conditions. We want to know more about that. We can't get it. We want to know about a lot of areas that we cannot get, so we want to go to Federal court to get this enforced.

What are Republicans doing? They are making stuff up. They are saying somehow we are asking the Attorney General to do things that will make him violate the law. That is wrong, wrong, wrong.

I am just going to end with this simple example.

The Attorney General of the United States gave the Republican ranking member of the Judiciary Committee the right to see their unredacted Mueller report. Was that illegal? No. But I can't see it.

That is wrong. There is no basis for that. We are simply going to go to Federal court. We are going to litigate it, and we are going to win.

All this resolution does is it allows us to enforce congressional subpoenas in Federal court. It is about not allowing the Trump administration to cover things up.

Mrs. LESKO. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. GOHMERT).

Mr. GOHMERT. Mr. Speaker, this is about harassing the President, and it is about delaying the inevitable.

I would have hoped that my friends across the aisle, especially in the Judiciary Committee that had concerns in 2005 and 2006 about the overreach that was possible through the FISA procedures, would have seen that there was no collusion, that the Russians did try, but nobody with the Trump campaign bought.

So we are left with the fact that the real collusion here was between the Clinton campaign, with Fusion GPS hiring a foreign agent, Christopher Steele, who talked to people he now admits could well have been agents of Vladimir Putin, who gave false information about Trump, the candidate, that was used in a dossier that was used to manipulate the FISA court into giving a warrant to start spying on the Trump campaign. That is what this was about.

And what people are calling obstruction of justice is exactly what you have when you have somebody falsely accused of colluding, conspiring with the Russians, and he knows he didn't do that, and he sees his family being harassed, and everybody that worked with the campaign that can be pushed and shoved and blackmailed, as happened, and bankrupted, you want to bring it to an end. You want to see justice done.

But instead of my friends in Judiciary coming together with us who have been concerned about the abuses of the FISA system so that it doesn't happen to other Americans, instead, they come with this resolution to push the matter down the road a little further to the 2020 election.

It has got to stop. Let's stop now.

Mr. MCGOVERN. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Texas (Ms. JACKSON LEE).

Ms. JACKSON LEE. Mr. Speaker, I think it is appropriate to correct a number of statements that have been made on the floor.

First of all, this is not the end. Director Mueller made this the beginning. When he concluded the report, he left a very large direction to the United States Congress. He recognized that he could not follow up because of policies at the DOJ regarding indictment in the process of the administration.

So the Congress, in its due diligence, took the responsibility not to target anyone, but to simply uphold the rule of law. In upholding the rule of law, we had an empty seat by Attorney General Barr, an empty seat by Mr. McGahn, an empty seat by Ms. Hicks, Ms. Donaldson, and we hope not an empty seat of the author of the report.

So all this resolution does is authorize the committee to seek civil enforcement of its subpoenas against Attorney General Barr, requiring him to provide Congress with the key evidence underlying the Mueller report as well as the unredacted report itself, and former White House Counsel Donald F. McGahn, requiring him to provide documents and appear for testimony.

He is not covered by executive privilege. In fact, executive privilege does not cover—his duty is to the White House Office of the General Counsel, or the White House counsel's office, not to the individual officeholder, the President. He has personal lawyers.

And we didn't break the law. 6(e), which is grand jury materials, our committee diligently said let's work with the Department of Justice, go to court, and decide what we can see.

We are simply following this little book that many have died for, and that is the Constitution of the United States, and those words in the Declaration of Independence that said we all are created equal, with certain unalienable rights of life and liberty and the pursuit of happiness.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. MCGOVERN. Mr. Speaker, I yield the gentleman from Texas an additional 1 minute.

Ms. JACKSON LEE. The American people would not want a Congress that turned its back on, frankly, the rule of law.

For those of us who had the special privilege of going to Normandy this past week, we got a great sense of pride, of the courage of Americans, the bravery of those young men, and all I could think of is how important it is to

all of us to adhere to those wonderful principles.

So, again, there is no targeting here. This is not a way to do policy or legislation. We can fight that battle on the floor of the House.

But if you read those volumes and end it in the last pages of Volume 2, you know that Director Mueller asked us to finish the task of looking into elements that he did not or could not and the underlying issues.

Let me also say, as we do that, we do it forthrightly because, in 2020, we want to make sure that every American has the right to vote and every American is not undermined by a foreign operative interfering and taking the election away from you.

I support the resolution. We must stand for the rule of law.

Mr. Speaker, I rise in strong support of H. Res. 430, authorizing the Committee on the Judiciary to initiate or intervene in judicial proceedings to enforce certain subpoenas and for other purposes.

It is an honor to serve in this body.

We are the successors and heirs to an august freedom earned centuries ago, expanded for successive groups and defended through the blood, sweat and tears of the nation's fighting forces.

It is this debt that took me to the beaches of Normandy to pay my respects on the 75th Anniversary of the D-Day invasion.

We are heirs to this legacy, and we are heirs to this ingenious system of separation of powers.

The system they laid down presumes equality of power among the branches.

As custodians of Article I, we have a duty to ensure the rigors of the Constitution are upheld.

This includes that when the Second Branch, Article II, flouts the investigative prerogatives of the Congress, there must be recourse and accountability.

As a senior member of the House Judiciary Committee, I have to say that it is regrettable that we are here.

This is because a hallmark of our constitutional republic is that no person is above the law.

Congressional oversight has been the tradition going back to the first years of our republic.

And the congressional prerogative of oversight has been a tool in the Article I arsenal as a way of asserting our power and protecting against the worst excesses of an executive.

This comports with the founding of our government, which sought to prevent the concentration of power in an autocratic executive, which was anathema to the Founders.

Which is why the events of the last many months have been so confounding.

The decision by this executive to flout all lawfully authorized subpoenas has been unprecedented.

This dispute between the political branches should work itself out, but because of this presidential obstinacy, we are in this predicament, which is why we must pass this H. Res. 430, Authorizing Subpoena Enforcement Litigation.

This Resolution, H. Res. 430, builds on the House Judiciary Committee's contempt finding against Attorney General Barr.

June 11, 2019

CONGRESSIONAL RECORD—HOUSE

H4421

The resolution authorizes the Committee to seek civil enforcement of its subpoenas against: (i) Attorney General Barr requiring him to provide Congress with the key evidence underlying the Mueller Report as well as the unredacted report itself; and (ii) former White House Counsel Donald F. McGahn, II requiring him to provide documents and appear for testimony.

The resolution further affirms that all committee chairs, when authorized by the Bipartisan Legal Advisory Group, retain the ability to seek civil enforcement of their own subpoenas.

The resolution adds that when committees proceed to court, they have any and all necessary authority under Article I of the Constitution, ensuring that they have the maximum range of legal authority available to them.

For example, on other key issues—such as the Department of Justice defying a subpoena to produce counter-intelligence documents relating to Russia's interference with the 2016 election, or the Commerce Department defying a subpoena to produce documents relating to the addition of a citizenship question to the 2020 Census—the committees can enforce these subpoenas without a floor vote.

This resolution ensures the House can conduct meaningful oversight on issues critical to Americans' lives while continuing to deliver on pocketbook issues.

The President's disregard for congressional oversight allows the Administration to cover-up his many disastrous policy decisions such as: attacking affordable healthcare coverage for millions of Americans including those with pre-existing conditions, tearing apart vulnerable immigrant families, misappropriating military funds for his ill-conceived border wall, and rolling back landmark civil rights protections for minorities.

The information subpoenaed by various congressional committees, including documents and testimony, is information to which Congress is constitutionally entitled and that past Administrations have routinely provided.

President Trump has prevented fact witnesses referenced in the Mueller Report from testifying or providing documents to Congress.

This is despite the fact that the Report detailed the Russian government's sustained attacks on our elections; over 170 contacts between President Trump's campaign and associates and agents of the Russian government; as well as numerous efforts by President Trump to impede or thwart House investigations scrutinizing his own conduct and that of his Administration.

In keeping with the President's sweeping public refusal to comply with congressional subpoenas, the White House and the Administration are fighting to keep the truth from the American people.

This resolution ensures we can conduct oversight on issues that are critical to Americans' lives while continuing to deliver on pocketbook issues.

The information subpoenaed by various congressional committees, including documents and testimony, is information Congress is constitutionally entitled to and which past Administrations have routinely provided.

Congress not only is constitutionally entitled to the underlying evidence in the Special Counsel's Report and key fact witness testimony, it requires this information so that it can fulfill its legislative, oversight, and other constitutional responsibilities.

This resolution follows past precedent used by Democratic and Republican Majorities while reinforcing an important principle in the House Rules.

This Administration's disregard for the legislative and judicial branches has reached a tipping point.

Despite representing a coequal branch of government, this Administration is flagrantly disregarding the role Congress and the Judiciary must play in our democratic system.

Mr. Speaker, the foregoing has been the basis for this Resolution.

It was my hope that this was not needed. But the President has proven me wrong, which is why this Resolution is needed.

I urge passage of the Resolution. Mrs. LESKO. Mr. Speaker, I yield 2 minutes to the gentleman from Virginia (Mr. CLINE), a fellow Judiciary Committee member.

Mr. CLINE. Mr. Speaker, I thank the gentlewoman for yielding time, and I want to recognize the gentlewoman from Texas for her remarks because, as a fellow member of the Judiciary Committee, we all stand for the rule of law. I, too, carry a Constitution with me.

The Constitution explicitly creates a system that is representative of the people, where the people are elected by their constituents to come up here and represent their views in Congress and vote for them. It is not to come up here and to hand off control, to hand their vote to the majority leader, to the Speaker, and to the majority whip and let them vote for them and for the people of their district whether or not to go to court.

The votes to enforce subpoenas, the votes to hold in contempt should be votes of the Representatives of the people. That is why this resolution today is such a travesty.

□ 1545

Mr. Speaker, I have only been a Member of this body for a few months, and I was proud to be named a member of the Judiciary Committee, but unfortunately, the circus that I have witnessed over the last few months is shocking, as the Democratic majority tries to find some reason, any reason, to impeach this President now that the Mueller investigation has wrapped up with no crimes found.

If they want to go back and repeat the last 2 years of the investigation, the millions of dollars, the hundreds of subpoenas, they are certainly entitled to do that, but I would argue it would be a waste of time for the American taxpayer and the American people.

Mr. Speaker, we had a hearing earlier today on the 9/11 Victim Compensation Fund, and the chairman did a masterful job of arguing in favor of that legislation, of which I am a cosponsor. It is bipartisan legislation. It is going to be marked up tomorrow. That is the way that this Judiciary Committee should operate.

Instead, we have hearings with empty chairs for the Attorney General, we have a hearing with an empty chair for the White House counsel.

Finally, yesterday we had a hearing with people in the seats, but they were all MSNBC and CNN commentators.

Mr. Speaker, this is a travesty of justice. I would urge my colleagues to defeat this resolution.

Mr. MCGOVERN. Mr. Speaker, I reserve the balance of my time.

Mrs. LESKO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the Committee on the Judiciary is one of the most venerable in the House of Representatives, and I am honored to have been selected to join its ranks.

It has jurisdiction over intellectual property, during a time of exponential scientific breakthroughs. It has jurisdiction over election interference, during a time when we are concerned about Russians interfering with our election. It has jurisdiction over immigration issues, during a time of an unprecedented security and humanitarian crisis on our southern border.

I am disappointed to see how the Democratic majority has chosen to waste this authority. I am disappointed to see that it has chosen to ignore its responsibilities to the American people in favor of sound bites and photo ops.

Instead of legislating, the Democratic majority prefers posing with buckets of fried chicken for the national media in crude attempts to undermine our President and his administration.

Really? It is time to move on and tackle the real issues that Americans care about.

The American people elected us, they elected me, to Congress to get things done. Let us secure the border. Let us improve healthcare. Let us improve education.

Let us stop this political theater that happens meeting after meeting and hearing after hearing in multiple committees in what I believe is a blatant attempt to influence the 2020 presidential election using taxpayer resources.

Mr. Speaker, I reserve the balance of my time.

Mr. MCGOVERN. Mr. Speaker, I have no further speakers. I reserve the balance of my time.

Mrs. LESKO. Mr. Speaker, may I inquire how much time I have left and how much time the other side has left?

The SPEAKER pro tempore. The gentlewoman has 1 minute remaining.

Mrs. LESKO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am going to use my 1 minute to actually refute these blatant allegations and fantasies, I believe, by my fellow Democrats, and that is how somehow the President and the Department of Justice has been stonewalling them.

Let me go over the timelines really quick.

On March 22, the Attorney General immediately notified the chairmen and the ranking members of the House and Senate Committees on Judiciary that they had received the confidential report from the special counsel.

The next day, the Attorney General informed Congress of the special counsel's principal conclusions.

March 29, he updated the Congress on what could be done and what redactions had to be made.

Then on April 18, less than a month after receiving it, the Attorney General made the redacted confidential report available to Congress and the entire public.

The same day, the Attorney General released the confidential report and made the minimally-redacted version of the confidential report available for review.

Mr. Speaker, I would urge a "no" vote on this resolution, and I yield back the balance of my time.

Mr. MCGOVERN. Mr. Speaker, I yield myself the remainder of my time.

Mr. Speaker, my friends on the other side have responded to this legislation with the same old same old.

They are circling the wagons around this President and his team. They are deliberately turning a blind eye to the corruption, to the deception, to the illegality that has surrounded this White House.

But let me remind them all of why we are here today. We are here because the American people elected each of us to write laws and to ensure those who execute them are accountable.

We all took an oath when we were sworn in to uphold and defend the Constitution. That is our job.

None of us were sent here to play defense for the President of the United States.

There are some things that are more important than politics, and I hope that even in this day and age, there are still some things that are more sacred than partisanship, like the rule of law and the separation of powers.

I mean, each of us took the same oath. We now have a choice whether or not to uphold it.

The choice should be a simple one: to stand up to President Trump and to defend the Constitution.

Mr. Speaker, I remember when many of my Republican friends ran for office claiming to be constitutional conservatives. Well, this is their chance to back up their campaign slogan with their vote.

We have a President that publicly states: "We're fighting all the subpoenas."

And I don't want people to testify.

Those are his words. Those are the words of the President, not some mob boss.

As we heard from the chairman of the Oversight and Reform Committee, Chairman CUMMINGS, the White House hasn't turned over a single document, a single piece of paper that his committee has requested to do their oversight work, not one piece of paper.

At the core of this resolution is Congress getting the appropriate documents, so we can do the appropriate oversight. That is part of the job.

How can anybody be against that? To be against that is to be part of the

coverup, is to be complicit with the obstruction to this White House demonstrates each and every day.

Mr. Speaker, I remind my colleagues that history will judge how we react to this moment. So I urge all of my colleagues, do not let this moment pass us by. Vote "yes" on this resolution, and let's hold the President accountable.

Nobody is above the law in the United States of America, not even the President of the United States.

The SPEAKER pro tempore. Members are again reminded to refrain from engaging in personalities toward the President.

Mr. MCGOVERN. Mr. Speaker, I urge a "yes" vote, and I yield back the balance of my time.

The SPEAKER pro tempore. All time for debate has expired.

Pursuant to House Resolution 431, the previous question is ordered on the resolution, as amended.

The question is on agreeing to the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mrs. LESKO. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 9 of rule XX, this 15-minute vote on adoption of the resolution will be followed by a 5-minute vote on the motion to suspend the rules and pass H.R. 2609.

The vote was taken by electronic device, and there were—yeas 229, nays 191, not voting 13, as follows:

[Roll No. 247]

YEAS—229

Adams	Crow	Higgins (NY)
Aguilar	Cueilar	Hill (CA)
Allred	Cunningings	Hines
Barragán	Cunningham	Horn, Kendra S.
Bass	Davids (KS)	Horsford
Beatty	Davis, Danny K.	Houlihan
Bera	Dean	Hoyer
Beyer	DeFazio	Huffman
Bishop (GA)	DeGette	Jackson Lee
Blumenauer	DeLauro	Jayapal
Blunt	DeBene	Jeffries
Bonamici	Delgado	Johnson (GA)
Boyle, Brendan	Demings	Johnson (TX)
F.	DeSaulnier	Kaptur
Brindisi	Deutch	Keating
Brown (MD)	Dingell	Kelly (IL)
Brownley (CA)	Doggett	Kennedy
Bustoe	Doyle, Michael	Khan
Butterfield	F.	Kildee
Carabjal	Engel	Kilmer
Cardenas	Escobar	Kim
Carson (IN)	Eshoo	Kind
Cartwright	Espallat	Kirkpatrick
Case	Evans	Krishnamoorthi
Casten (IL)	Finkemaier	Laub
Castor (FL)	Fletcher	Langevin
Castro (TX)	Foster	Larson (WA)
Chu, Judy	Frankel	Larson (CT)
Cisilino	Fudge	Lawrence
Cleaves	Gallagher	Lawson (FL)
Clark (MA)	Garamendi	Lee (CA)
Clarke (NV)	Garcia (IL)	Lee (NV)
Cleaver	Garcia (TX)	Levin (CA)
Clyburn	Golden	Levin (MI)
Cohen	Gomez	Lewis
Conaway	Gonzalez (TX)	Lieu, Ted
Cooper	Gotthelmer	Lipinski
Correa	Green (TX)	Loeback
Costa	Grihalva	Logren
Courtesy	Harold	Lowenthal
Cox (CA)	Harvey (CA)	Lowy
Craig	Hays	Lujan
Crist	Hayes	Luria

Lynch	Peterson	Smith (WA)
Malinowski	Phillips	Soto
Maloney	Pingree	Spanberger
Carolyn B. Maloney, Sean	Pocan	Spier
Matsui	Porter	Stanton
McAdams	Pressley	Stevens
McBath	Rice (NC)	Suzuki
McCollum	Quilley	Swalwell (CA)
McBohain	Raskin	Takano
McGovern	Rice (NY)	Thompson (CA)
McNerney	Richmond	Thompson (MS)
Meeks	Rose (NY)	Thurman
Meng	Rouba	Tlaib
Moore	Roybal-Allard	Tomko
Morille	Ruiz	Torres (CA)
Moulton	Ruppersberger	Torres Small
Mucarsel-Powell	Rush	(NM)
Murphy	Sanchez	Trahan
Nadler	Sarbanes	Trone
Napolitano	Saul	Underwood
Neal	Schakowsky	Van Drew
Neguse	Schiff	Vargas
Noronco	Schneider	Veasey
O'Hillarian	Scott (AL)	Vela
Ocasio-Cortez	Schrier	Vielosky
Omar	Scott (VA)	Wasserman
Pallone	Scott, David	Schultz
Panetta	Serrano	Waters
Pappas	Sessions	Watson Coleman
Pascrell	Shalala	Welch
Payne	Sherman	Weston
Pelosi	Sherrill	Wild
Perlmutter	Sires	Wilson (FL)
Peters	Slotkin	Yarmuth

NAYS—191

Abraham	Gohmert	Newhouse
Aderholt	Gonzalez (OH)	Norman
Allen	Gooden	Nunes
Amodei	Granger	Olson
Armstrong	Graves (GA)	Palazzo
Arrington	Graves (LA)	Palmer
Babin	Graves (MO)	Pence
Bacon	Grothman	Perry
Baird	Gusnet	Poony
Balderson	Guthrie	Ratcliffe
Banks	Hagedorn	Reed
Barr	Harris	Reschenthaler
Brennan	Hastert	Rice (SC)
Biggs	Hern, Kevin	Riggleman
Bilirakis	Hice (GA)	Roby
Bishop (UT)	Higgins (LA)	Rodgers (WA)
Brady	Holding	Roe, David P.
Brooks (IN)	Hollingsworth	Rogers (AL)
Buchanan	Holroyd	Rogers (KY)
Bushon	Hulsham	Rouzer
Burd	Hurd (TX)	Ross, John W.
Burr	Johnson (LA)	Roy
Burgess	Johnson (OH)	Rutherford
Byrne	Johnson (SD)	Schalick
Calvert	Jordan	Schweikert
Carter (GA)	Joyce (OH)	Scott, Austin
Carter (TX)	Joyce (PA)	Senatsenbrenner
Chabot	Kakko	Shimkus
Cheney	Kelmer	Smith (MO)
Clbo	Kelly (MS)	Smith (NE)
Cloud	Kelly (PA)	Smith (NJ)
Cole	Kine (NY)	Snicker
Collins (GA)	Kininger	Spautz
Collins (NY)	Kristoff (TN)	Staubert
Cramer	LaHood	Stefanik
Conaway	LaMalfa	Stell
Cook	Lamborn	Steuere
Crawford	Latta	Stewart
Crenshaw	Leahy	Stivers
Curtis	Loach	Taylor
Davidson (OH)	Loudermilk	Thompson (PA)
Davis, Rodney	Lucas	Thornberry
DesJarlais	Luft	Timmons
Diaz-Balart	Marchant	Tipton
Duffy	Marshall	Turner
Duncan	Masseo	Upton
Dunn	Matt	Wagner
Emmer	McCarthy	Walberg
Estes	McCauley	Walden
Ferguson	McCaul	Walker
Fitzpatrick	McClintock	Wallace
Fischmann	McHenry	Walorski
Flake	McKinley	Waltz
Fortenberry	Meadows	Waters
Fox (NC)	Meuser	Webster (TX)
Fulcher	Miller	Webster (FL)
Gastic	Mitchell	Wenstrup
Gallagher	Moolenaar	Westerman
Gallagher	Mooney (WV)	Williams
Gibbs	Mulroy	Wilson (SC)



116TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
 1st Session } 116-108

AUTHORIZING THE COMMITTEE ON THE JUDICIARY TO INITIATE OR INTERVENE IN JUDICIAL PROCEEDINGS TO ENFORCE CERTAIN SUBPOENAS AND FOR OTHER PURPOSES

JUNE 10, 2019.—Referred to the House Calendar and ordered to be printed

Mr. MCGOVERN, from the Committee on Rules,
 submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H. Res. 430]

The Committee on Rules, to whom was referred the resolution (H. Res. 430) authorizing the Committee on the Judiciary to initiate or intervene in judicial proceedings to enforce certain subpoenas and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the resolution as amended be agreed to.

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The amendment is as follows:
 Strike the text and insert the following:

That the chair of the Committee on the Judiciary of the House of Representatives is authorized, on behalf of such Committee, to initiate or intervene in any judicial proceeding before a Federal court—

(1) to seek declaratory judgments and any and all ancillary relief, including injunctive relief, affirming the duty of—

(A) William P. Barr, Attorney General, to comply with the subpoena that is the subject of the resolution accompanying House Report 116-105; and

(B) Donald F. McGahn, II, former White House Counsel, to comply with the subpoena issued to him on April 22, 2019; and

(2) to petition for disclosure of information regarding any matters identified in or relating to the subpoenas referred to in paragraph (1) or any accompanying report, pursuant to Federal Rule of Criminal Procedure 6(e), including Rule 6(e)(3)(E) (providing that the court may authorize disclosure of a grand-jury matter “preliminarily to... a judicial proceeding”).

Resolved, That the chair of each standing and permanent select committee, when authorized by the Bipartisan Legal Advisory Group, retains the ability to initiate or intervene in any judicial proceeding before a Federal court on behalf of such committee, to seek declaratory judgments and any and all ancillary relief, including injunctive relief, affirming the duty of the recipient of any subpoena duly issued by that committee to comply with that subpoena. Consistent with the Congressional Record statement on January 3, 2019, by the chair of the Committee on Rules regarding the civil enforcement of subpoenas pursuant to clause 8(b) of rule II, a vote of the Bipartisan Legal Advisory Group to authorize litigation and to articulate the institutional position of the House in that litigation is the equivalent of a vote of the full House of Representatives.

Resolved, That in connection with any judicial proceeding brought under the first or second resolving clauses, the chair of any standing or permanent select committee exercising authority thereunder has any and all necessary authority under Article I of the Constitution.

Resolved, That the chair of any standing or permanent select committee exercising authority described in the first or second resolving clause shall notify the House of Representatives, with respect to the commencement of any judicial proceeding thereunder.

Resolved, That the Office of General Counsel of the House of Representatives shall, with the authorization of the Speaker, represent any standing or permanent select committee in any judicial proceeding initiated or intervened in pursuant to the authority described in the first or second resolving clause.

Resolved, That the Office of General Counsel of the House of Representatives is authorized to retain private counsel, either for pay or pro bono, to assist in the representation of any standing or permanent select committee in any judicial proceeding initiated or intervened in pursuant to the authority described in the first or second resolving clause.

PURPOSE AND SUMMARY

This resolution authorizes the Committee on the Judiciary to initiate or intervene in judicial proceedings to enforce certain subpoenas, a process commonly referred to as “civil contempt.”¹ The resolution affirms that the chair of each standing and permanent select committee, when authorized by the Bipartisan Legal Advisory Group, retains the ability to initiate or intervene in judicial proceedings to seek enforcement of subpoenas issued by the committee. The resolution provides that, in connection with any judicial proceeding brought under the first or second resolving clause, the chair of any standing or permanent select committee exercising the authority thereunder has any and all necessary authority under Article I of the Constitution. The resolution requires the chair of any standing or permanent select committee exercising authority as described in the first or second resolving clause to notify the House of Representatives, with respect to the commencement of any judicial proceeding. The resolution allows the Office of General Counsel of the House of Representatives, with authorization of the Speaker, to represent any standing or permanent select committee in any judicial proceeding initiated or intervened in pursuant to the authority described in the first or second resolving

¹ See, e.g., Morton Rosenberg, *When Congress Comes Calling: A Study on the Principles, Practices, and Pragmatics of Legislative Inquiry* 31 (2017) (referring to civil suits to enforce subpoenas as “civil contempt suits”); Morton Rosenberg & Todd B. Tatelman, Cong. Res. Serv., *Congress’s Contempt Power: Law, History, Practice, and Procedure* 37–46 (Apr. 15, 2008) (describing judicial proceedings to enforce subpoenas as “Civil Contempt in the House of Representatives”).

clause. Finally, the resolution permits that the Office of General Counsel of the House of Representatives to retain private counsel, either for pay or pro bono, to assist in the representation of any standing or permanent select committee in any judicial proceeding initiated or intervened in pursuant to the authority described in the first or second resolving clause.

BACKGROUND AND NEED FOR LEGISLATION

Since the start of the current 116th Congress, in performing its constitutional duty to conduct oversight of the Executive Branch, the House of Representatives has been met with unprecedented stonewalling and obstruction by the White House and Trump Administration. This cover-up is being directed from the top. President Trump, without citing any legitimate rationale, has vowed, "We're fighting all the subpoenas"² and declared, "I don't want people testifying."³ Since then, the President has refused to work on legislative priorities, such as infrastructure, until the House halts all oversight and investigations of his Administration.⁴

The result of this blanket obstruction has been the Trump Administration's failure to fully comply with, or completely ignoring, all legitimate oversight requests. Whether it be ignoring requests for documents, limiting in-person interviews, refusing to attend depositions, or defying duly issued congressional subpoenas, the Executive Branch's actions to undermine the oversight obligations of the Legislative Branch have been wide-ranging and systemic.

This obstruction of the oversight responsibilities of the House is not only an affront to our constitutional system of checks and balances, but it also serves to stifle the work of Congress to address issues important to the American people. From protecting Americans' access to health care and responding to natural disasters, to protecting our clean air and water, this Administration has failed to provide the information the People's House requires to conduct oversight of these crucial issues. Obstructing oversight in these areas impairs the ability of the Congress to have sufficient information to legislate effectively and efficiently on behalf of the American people. As the Supreme Court has said: "The power of inquiry has been employed by Congress throughout our history, over the whole range of the national interests concerning which Congress might legislate or decide upon due investigation not to legislate; it has similarly been utilized in determining what to appropriate from the national purse, or whether to appropriate. The scope of the power of inquiry, in short, is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution."⁵

No one is above the law and no administration is immune from oversight. The House of Representatives will hold this Administration accountable, continue to advance legislation important to the

²*Trump vows stonewall of 'All' House subpoenas, setting up fight over powers* (April 24, 2019) (online at <https://www.nytimes.com/2019/04/24/us/politics/donald-trump-subpoenas.html>)

³*Trump says he is opposed to White House aides testifying to Congress, deepening power struggle with Hill* (April 23, 2019) (online at https://www.washingtonpost.com/politics/trump-says-he-is-opposed-to-white-house-aides-testifying-to-congress-deepening-power-struggle-with-hill/2019/04/23/0c7bd8dc-65e0-11e9-8985-4cf30147bdea_story.html?utm_term=.c08cc78e2536)

⁴*Trump Refuses to Repair Infrastructure Unless Congress Halts All Investigations*, New York Magazine (May 22, 2019) (online at <http://nymag.com/intelligencer/2019/05/trump-stop-investigating-me-or-infrastructure-deal-dies.html>).

⁵*Barenblatt v. United States*, 360 U.S. 109, 111 (1959).

American people, and stand up for the principle of checks and balances that is the bedrock of our Constitution.

Investigating Critical Issues Important to the American People

The Trump Administration's unprecedented obstruction of all Congressional oversight not only erodes our constitutional system of checks and balances, but also prevents the People's House from getting the answers it needs to properly oversee the Executive Branch and adopt legislation on issues that impact the American people. Stonewalling by the Trump Administration is harming Americans' access to health care.

a. Harm to Americans' Access to Health Care

The Trump Administration's obstruction is stifling Democratic efforts to provide oversight to ensure that the American people have access to affordable healthcare. The Committees on Oversight and Reform, Energy and Commerce, Ways and Means, Education and Labor, and the Judiciary, are investigating the Trump Administration's involvement in the Department of Justice's (DOJ) sudden and significant decision to reverse its previous position defending the constitutionality of key provisions of the Affordable Care Act (ACA). Despite requests for documents from DOJ and the White House, as well as requests for interviews with key witnesses on April 8, 2019 and May 13, 2019, neither DOJ nor the White House has responded in any capacity.⁶

The Trump Administration has also failed to respond to Congressional inquiries regarding its sabotage of the American health care system, which is increasing health care costs and taking away coverage from American families and patients. On February 21, 2018, the Administration released a Proposed Rule on Short-Term, Limited Duration Insurance (STLDI). The Administration proposed to permit the sale of junk STLDI plans with duration terms of up to 12 months and that could be renewed for up to three years. These unregulated junk plans leave American families exposed to great financial risk and increase costs for individuals with pre-existing

⁶Letter from Elijah E. Cummings, Chairman, H. Comm. on Oversight and Reform, Frank Pallone, Jr., Chairman, H. Comm. on Energy and Commerce, Richard E. Neal, Chairman, H. Comm. on Ways and Means, Robert C. "Bobby" Scott, Chairman, H. Comm. on Education And Labor, and Jerrold Nadler, Chairman, H. Comm. on Judiciary, to William Barr, Attorney General, Dept. of Justice (April 8, 2019), available at <https://judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/4.8.2019%20Letter%20to%20Barr%20re.%20ACA.pdf>; Letter from Elijah E. Cummings, Chairman, H. Comm. on Oversight and Reform, Frank Pallone, Jr., Chairman, H. Comm. on Energy and Commerce, Richard E. Neal, Chairman, H. Comm. on Ways and Means, Robert C. "Bobby" Scott, Chairman, H. Comm. on Education and Labor, and Jerrold Nadler, Chairman, H. Comm. on Judiciary, to Pat Cipollone, Counsel to the President, (April 8, 2019), available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-04-08.EEC%20Pallone%20Neal%20Scott%20Nadler%20to%20Cipollone-WH%20re%20ACA.pdf>; Letter from Elijah E. Cummings, Chairman, H. Comm. on Oversight and Reform, Frank Pallone, Jr., Chairman, H. Comm. on Energy and Commerce, Richard E. Neal, Chairman, H. Comm. on Ways and Means, Robert C. "Bobby" Scott, Chairman, H. Comm. on Education And Labor, and Jerrold Nadler, Chairman, H. Comm. on Judiciary, to William Barr, Attorney General, Dept. of Justice (May 13, 2019), available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-05-13.EEC%20Pallone%20Neal%20Scott%20Nadler%20to%20Barr-DOJ%20re%20ACA.pdf>.

conditions who need comprehensive coverage. On August 3, 2018, the Administration released the Final Rule on STLDI. On January 8, 2019, the Committees sent a letter to the Administration requesting information, including how HHS arrived at the final rule.⁷ HHS has failed to produce any documents in response.

On October 22, 2018, the Trump Administration issued guidance on Section 1332 of the ACA that raises costs for older and vulnerable Americans and eliminates protections for people living with pre-existing conditions. The Committees on Energy and Commerce and Ways and Means sent a letter to the Administration requesting information about the proposed changes, including an explanation as to why the Administration decided to promulgate the changes as Section 1332 guidance rather than go through a Notice of Proposed Rulemaking process, as well as a comprehensive document request.⁸ The Administration has not provided a response or the documents requested.

b. Threatening Environmental Protections

Stonewalling by the Administration is putting our environment and public health at risk. The Trump Administration has ignored good-faith Congressional inquiries for information about chemical risk assessments that have significant implications for human health. For example, in 2018, the Environmental Protection Agency's (EPA) political leadership announced it would not release an already-completed assessment on the health effects of formaldehyde for peer review and provided no defense of its decision. On March 4, 2019, the Committee on Science, Space & Technology requested documents from EPA to understand how this decision was reached, issuing a deadline of April 5.⁹ EPA was nonresponsive so the Committee issued a second deadline of April 19. But EPA has provided zero documents in response to the request to date. EPA has provided no explanation for its failures to respond.

On January 7, the Committee on Natural Resources requested information about attempts to work on drilling in the Arctic during a government shutdown. The Department of the Interior (DOI) has not provided information.¹⁰

On January 24, the Committee requested documents regarding the Administration's plan to drill for oil off the coastal U.S. DOI has not provided the documents.¹¹

⁷ Letter from the Frank Pallone, Jr., Chairman, H. Comm. on Energy and Commerce, Bobby Scott, Chairman, H. Comm. on Education and Labor, Richard Neal, Chairman, H. Comm. on Ways and Means, Ron Wyden, Ranking Member, S. Comm. on Finance, Patty Murray, Ranking Member, S. Comm. on Health, Educ., Labor, and Pensions, to Alex Azar, Secretary, Dept. of Health and Human Services, Alexander Acosta, Secretary, Dept. of Labor, Steven Mnuchin, Secretary, Dept. of Treasury, Mick Mulvaney, Director, Office of Mgmt. and Budget (Jan. 8, 2019).

⁸ Letter from the Frank Pallone, Jr., Chairman, H. Comm. on Energy and Commerce, Richard Neal, Chairman, H. Comm. on Ways and Means, to Alex Azar, Secretary, Dept. of Health and Human Services, Steven Mnuchin, Secretary, Dept. of Treasury, Seema Verma, Administrator, Centers for Medicare & Medicaid Services, and Charles Rettig, Commissioner, Internal Revenue Service (Nov. 29, 2018).

⁹ Letter from Eddie Bernice Johnson, Chairwoman, H. Comm. on Science, Space & Technology, to Andrew Wheeler, Administrator, Environmental Protection Agency (Mar. 4, 2019).

¹⁰ Letter from Raúl Grijalva, Chairman, H. Comm. on Natural Resources, to David Bernhardt, Acting Secretary, Dept. of Interior (Jan. 7, 2019).

¹¹ Letter from Raúl Grijalva, H. Comm. on Natural Resources, Chairman, and Alan Lowenthal, Chairman, H. Comm. on Natural Resources, Sub. Comm. on Energy and Mineral Resources, to David Bernhardt, Acting Secretary, Dept. of Interior (Jan. 24, 2019).

On January 30, the Committee requested six documents relating to the undermining of protections for endangered species. DOI has not provided the documents.¹²

On February 11, the Committee requested documents pertaining to the cancellation of a scientific study on the impacts of mountain-top removal coal mining on the health of people living in neighboring communities. DOI has not provided the documents.¹³

On February 26, the Committee requested documents pertaining to attempts by companies to avoid rules enacted to prevent another Deepwater Horizon-like oil spill of millions of gallons. DOI has not provided the documents.¹⁴

On February 28 and March 1, the Committee requested documents relating to the shrinking of our national monuments. DOI and the Department of Commerce (DOC) have not provided the documents.^{15 16}

On March 1, the Committee requested documents about a massive mine proposed next to a Minnesota wilderness area. DOI has not provided the documents.¹⁷

On March 11, the Committee requested documents concerning the Administration's efforts to enforce worker safety and environmental protections for oil and gas wells on public lands. DOI has not provided the documents.¹⁸

On March 13, the Committee requested documents about the Administration's multiple attempts to withhold information about their operations under the Freedom of Information Act from the American people. DOI has not provided the documents.¹⁹

On March 13, several committees requested information regarding weakening protections for whales. DOI and DOC have not provided the information.²⁰

¹² Letter from Raúl Grijalva, Chairman, H. Comm. on Natural Resources, to David Bernhardt, Acting Secretary, Dep't of Interior, and Wilbur Ross, Secretary, Dept. of Commerce (Jan. 30, 2019).

¹³ Letter from Raúl Grijalva, Chairman, H. Comm. on Natural Resources, and Alan Lowenthal, Chairman, H. Comm. on Natural Resources, Sub. Comm. on Energy and Mineral Resources to David Bernhardt, Acting Secretary, Dep't of Interior (Feb. 11, 2019).

¹⁴ Letter from Raúl Grijalva, Chairman, H. Comm. on Natural Resources, and Alan Lowenthal, Chairman, H. Comm. on Natural Resources, Sub. Comm. on Energy and Mineral Resources, to Scott A. Angelle, Director, Bureau of Safety and Envtl. Enforcement, Dept. of Interior (Feb. 26, 2019).

¹⁵ Letter from Raúl Grijalva, Chairman, H. Comm. on Natural Resources, to Wilbur Ross, Secretary, Dept. of Commerce, and David Bernhardt, Acting Secretary, Dept. of Interior (Feb. 28, 2019).

¹⁶ Letter from and Raúl Grijalva, Chairman, H. Comm. on Natural Resources, to Rear Admiral Gallaudet, Deputy Adm'r, Nat'l Ocean and Atmospheric Admin (Mar. 1, 2019).

¹⁷ Letter from Raúl Grijalva, Chairman, H. Comm. on Natural Resources, Betty McCollum, Chairwoman, Comm. on Appropriations, Sub. Comm. on Interior-Environment, and Alan Lowenthal, Chairman, H. Comm. on Natural Resources, Sub. Comm. on Energy and Mineral Resources, to Sonny Perdue, Secretary, Dep't of Agric., and David Bernhardt, Acting Secretary, Dep't of Interior (Mar. 1, 2019).

¹⁸ Letter from Raúl Grijalva, Chairman, H. Comm. on Natural Resources, and Alan Lowenthal, Chairman, H. Comm. on Natural Resources, Sub. Comm. on Energy and Mineral Resources, to David Bernhardt, Acting Secretary, Dep't of Interior (Mar. 11, 2019).

¹⁹ Letter from Raúl Grijalva, Chairman, H. Comm. on Natural Resources, Elijah Cummings, Chairman, H. Comm. on Oversight and Reform, and TJ Cox, Chairman, H. Comm. on Oversight and Reform, Sub. Comm. on Oversight and Investigations to David Bernhardt, Acting Secretary, Dept. of Interior (Mar. 13, 2019).

²⁰ Letter from Raúl Grijalva, Chairman, H. Comm. on Natural Resources, et al., Mike Pompeo, Secretary, Dept. of State, Wilbur Ross, Secretary, Dept. of Commerce, David Bernhardt, Acting Secretary, Dept. of Interior, Robert E. Lighthizer, Ambassador, U.S. Trade. Rep. (Mar. 13, 2019).

On March 26, the Committee requested a single document detailing the risk posed by three pesticides to 1,400 threatened and endangered species. DOI has not provided the document.²¹

On April 10, the Committee requested a single document describing DOI's plan to reorganize. DOI has not provided the document.²²

On May 10, the Committee requested documents concerning the US Department of Agriculture's failure to consult with indigenous peoples when developing protections for forested lands. DOI has not provided the documents.²³

On May 13, the Committee requested information about the Administration's failure to protect endangered birds. DOI has not provided the documents.²⁴

On December 7, 2018, Energy and Commerce Committee Democrats sent a letter to the Administration requesting information and health and safety studies of per and polyfluoroalkyl substances (PFAS) reviewed by EPA.²⁵ After repeated follow up by staff, Environment and Climate Change Subcommittee Chairman Paul Tonko requested a response to the letter from EPA Administrator Wheeler during a subcommittee hearing on April 9, 2019. Administrator Wheeler refused to commit to replying, and that request is still outstanding.

On January 28, 2019, Energy and Commerce Committee Chairman Pallone and Subcommittee Chairpersons Tonko and DeGette requested information and documents related to EPA's actions to weaken human health protections against mercury, including information on industry compliance with EPA's standards.²⁶ After his agency failed to respond, EPA Administrator Wheeler personally committed to Chair DeGette to provide this information in his testimony before the Committee on April 9, 2019. To date, despite repeated follow-up communications to the agency by Committee staff, EPA has still failed to provide the requested information.

On January 30, 2019, Energy and Commerce Committee Chairman Pallone and Subcommittee Chairman Tonko requested health and safety studies used in EPA's risk assessment of Pigment Violet 29.²⁷ That request was renewed on March 21.²⁸ Although the agen-

²¹ Letter from Raúl Grijalva, Chairman, H. Comm. on Natural Resources, Jared Huffman, Chairman, H. Comm. on Natural Resources, Sub. Comm. on Water, Oceans, and Wildlife, and Rep. Nydia Velázquez to David Bernhardt, Acting Secretary, Dept. of Interior (Mar. 26, 2019).

²² Letter from Raúl Grijalva, Chairman, H. Comm. on Natural Resources, and TJ Cox, Chairman, H. Comm. on Oversight and Reform, Sub. Comm. on Oversight and Investigations to David Bernhardt, Acting Secretary, Dept. of Interior (April 10, 2019).

²³ Letter from Raúl Grijalva, Chairman, H. Comm. on Natural Resources, et. al. to Sonny Perdue, Secretary, Dept. of Agriculture (May 10, 2019).

²⁴ Letter from Raúl Grijalva, Chairman, H. Comm. on Natural Resources, to Ms. Everson, (May 13, 2019).

²⁵ Letter from Paul D. Tonko, Chairman, H. Comm. on Energy and Commerce, Subcommittee on Environment and Climate Change, Rep. Ben Ray Lujan, Rep. Debbie Dingell, and Rep. Peter Welch, to Andrew R. Wheeler, Administrator, Environmental Protection Agency (Dec. 7, 2018).

²⁶ Letter from Frank J. Pallone, Jr., Chairman, H. Comm. on Energy and Commerce, Diana DeGette, Chairwoman, H. Comm. on Energy and Commerce, Sub. Comm. on Oversight and Investigations, and Paul D. Tonko, Chairman, H. Comm. on Energy and Commerce, Sub. Comm. on Environment and Climate Change, to Andrew R. Wheeler, Administrator, Environmental Protection Agency (Jan. 28, 2019).

²⁷ Letter from Frank J. Pallone, Jr., Chairman, H. Comm. on Energy and Commerce, Paul D. Tonko, Chairman, H. Comm. on Energy and Commerce, Sub. Comm. on Environment and Climate Change, to Andrew R. Wheeler, Administrator, Environmental Protection Agency (Jan. 30, 2019).

²⁸ Letter from Frank J. Pallone, Jr., Chairman, H. Comm. on Energy and Commerce, Paul D. Tonko, Chairman, H. Comm. on Energy and Commerce, Sub. Comm. on Environment and Climate Change, to Andrew R. Wheeler, Administrator, Environmental Protection Agency (Mar. 21, 2019).

cy provided the studies on March 22, significant portions of the studies were redacted. The agency has not provided the redacted portions of the studies and refused to discuss the basis for that refusal. Both the request for PFAS information and the request for PV29 studies were made pursuant to the *Toxic Substances Control Act*, which includes an explicit requirement to provide all information reported to or otherwise obtained by the Administrator under that law upon written request by any duly authorized committee of Congress.

c. Putting American Workers at Risk

The Administration's obstruction is preventing the House from conducting oversight of protections for American workers. The Administration has rebuffed efforts to ensure that the Department of Labor is sufficiently staffed in order to perform its central mission of protecting workers. For example, on April 11, 2019, the Committee on Education and Labor sent a letter to Secretary Acosta requesting information concerning the Department of Labor's current vacancies (excluding Senate confirmed positions).²⁹ On April 29, 2019, the Department provided a non-responsive answer that simply attached public budget numbers for staffing levels.

The Administration has stifled efforts to ensure that the Occupational Safety and Health Administration is not arbitrarily rolling back safety standards on carcinogens for certain workers. For example, on April 2, 2019, the Committee on Education and Labor sent a letter to Secretary Acosta requesting information concerning the Occupational Safety and Health Administration's June 27, 2017, *Notice of Proposed Rulemaking for Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyards Sector*.³⁰ Specifically, the Committee requested information about their required scientific and/or legal determination that rolling back the beryllium exposure protections for those in the construction and shipyards industries was justified. On April 26, 2019, the Department sent a non-responsive answer, attaching public rulemaking documents that the Committee already had and not answering any of the Committee's requests.

The Administration has also blocked inquiries to ensure that its deregulatory efforts are proceeding lawfully. For example, on April 3, 2019, the Committee on Education and Labor sent a letter to Secretary Acosta requesting information concerning the Department of Labor's rulemaking steps taken in its 2017 *Notice of Proposed Rulemaking Regarding Tip Regulations Under the Fair Labor Standards Act*, 2018 *Notice of Proposed Rulemaking Expanding Employment, Training, and Apprenticeship Opportunities for 16- and 17-Year-Olds in Health Care Occupations Under the Fair Labor Standards Act*, and 2019 *Notice of Proposed Rulemaking Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees*.³¹ On April 29, 2019, the Department sent a non-responsive answer to the Committee, attaching public rulemaking documents that the Com-

²⁹Letter from Bobby Scott, Chairman, H. Comm. on Education and Labor to Alexander Acosta, Secretary, Dept. of Labor (April 11, 2019).

³⁰Letter from Bobby Scott, Chairman, H. Comm. on Education and Labor to Alexander Acosta, Secretary, Dept. of Labor (April 2, 2019).

³¹Letter from Bobby Scott, Chairman, H. Comm. on Education and Labor to Alexander Acosta, Secretary, Dept. of Labor (April 3, 2019).

mittee already had and not answering any of the Committee's requests.

d. Negatively Impacting the Education System and Student Loan Borrowers

The Administration's unprecedented obstruction is harming oversight of our nation's education system. For example, the Administration has rejected efforts to obtain information about the U.S. Department of Education's decision to install Deputy General Counsel Phillip H. Rosenfelt as the Department's Acting Inspector General. The Committee on Education and Labor has sent two letters, dated February 1³² and February 19, 2019,³³ requesting documentation of the surrounding circumstances leading to this decision. The Department has sent multiple non-responsive letters which have cited "executive branch confidentiality interests" and improperly invoked FOIA exemptions as rationales for refusing to provide requested correspondence. In another example, the Administration has rebuffed efforts to obtain information on the Department's implementation of the Borrower Defense to Repayment regulations. For example, the Committee on Education and Labor sent a letter on March 25, 2019,³⁴ detailing the Department's stonewalling of the Committee's staff-level requests for information which date back to November 2018. Additionally, despite repeated requests for an in person briefing on the substantive issues as well as a document production, the Department will not set a date or agree to hold a briefing.

e. Hindering Investigations into Alleged Misconduct in our Financial System

The Administration has rebuffed efforts to investigate the flow of illicit funds through the U.S. financial system, businesses and real estate as well as efforts to ensure U.S. national security. On April 15, 2019, the Committee on Financial Services, together with the Permanent Select Committee on Intelligence, subpoenaed documents from Deutsche Bank. The subpoena sought information relating to the Committees' investigations into the integrity of the U.S. financial system and national security, including bank fraud, money laundering, foreign influence in the U.S. political process, and the counterintelligence risks posed by foreign powers' use of financial leverage. Also, on April 15, 2019, the Committee on Financial Services subpoenaed Capital One for similar information relating to its investigation into the efficacy of bank safety practices,

³² Letter from Bobby Scott, Chairman, H. Comm. on Education and Labor, Rosa DeLauro, Chairwoman, H. Comm. on Appropriations, Sub. Comm. on Labor, Health and Human Services, Education, and Related Agencies, and Patty Murray, Ranking Member, S. Comm. on Health, Education, Labor and Pensions, to Betsy DeVos, Secretary, Dept. of Education (Feb. 1, 2019) available at <https://edlabor.house.gov/imo/media/doc/2019-02-01%20Top%20Dems%20Demand%20Answers%20From%20ED%20Following%20Move%20to%20Replace%20Independent%20Watchdog%20With%20Top%20Department%20Official.pdf>.

³³ Letter from Bobby Scott, Chairman, H. Comm. on Education and Labor, Rosa DeLauro, Chairwoman, H. Comm. on Appropriations, Sub. Comm. on Labor, Health and Human Services, Education, and Related Agencies, Elijah E. Cummings, Chairman, H. Comm. on Oversight and Reform, Patty Murray, Ranking Member, S. Comm. on Health, Education, Labor and Pensions, and Gary Peters, Ranking Member, S. Comm. on Homeland Security and Governmental Affairs, to Betsy DeVos, Secretary, Dept. of Education (Feb. 19, 2019) available at <https://edlabor.house.gov/imo/media/doc/ED%20OIG%20Follow%20up%20Letter%202-19.pdf>.

³⁴ Letter from Bobby Scott, Chairman, H. Comm. on Education and Labor, and Patty Murray, Ranking Member, S. Comm. on Health, Education, Labor, and Pensions, to Betsy DeVos, Secretary, Dept. of Education (March 25, 2019).

banking regulations, loan practices and anti-money laundering policies and procedures, including as they are applied to and involve the accounts of President Trump and his family members. President Trump filed suit against Deutsche Bank and Capital One to prevent the banks from complying with the Committees' validly-issued subpoenas. In ruling to deny President Trump's motion for a preliminary injunction in that case, Judge Ramos stated, "[H]ere, the committees have alleged a pressing need for the subpoenaed documents to further their investigation, and it is not the role of the Court or plaintiffs to second guess that need, especially in light of the Court's conclusions that the requested documents are pertinent to what is likely a lawful congressional investigation."³⁵

President Trump's obstruction of investigations into our financial system also extends to investigations of potential wrongdoing in connection with his finances. For example, the Oversight and Reform Committee issued a subpoena to the accounting firm Mazars USA LLP in its investigation into reports that President Trump may have inflated and deflated his financial assets to suit his own purposes. On March 20, 2019, the Committee sent a letter to Mazars requesting information on how these financial statements and other financial disclosures were prepared, including the financial statements themselves and communications relating to their preparation.³⁶ On March 27, 2019, counsel to Mazars sent a letter explaining that, pursuant to the company's legal obligations, Mazars cannot voluntarily turn over the documents "unless disclosure is made pursuant to, among other things, a Congressional subpoena."³⁷ On April 15, 2019, the Committee issued a subpoena to Mazars demanding the production of four categories of responsive documents by April 29, 2019. On April 22, 2019, President Trump and his companies sued Mazars and the Committee to enjoin compliance with and enforcement of the subpoena, arguing that the Committee's investigation lacked a valid legislative purpose. After briefing and a hearing, on May 20, 2019, the trial court issued a final order in favor of the Committee, finding that the Committee's investigation had a valid legislative purpose.

f. Jeopardizing Care for America's Veterans

The Trump Administration's obstruction is hurting the Congress' ability to oversee the Department of Veterans Affairs, and in turn hurting our nation's heroes. For example, Administration officials have refused to appear before the Veterans' Affairs Committee to testify on modernizing the severely outdated systems used for VA benefits, on budget requests related to veterans' readjustment benefits, and on recommendations to improve the Department of Veterans Affairs' effectiveness.

In a more stunning example, all VA hospitals were instructed by VA's Office of Congressional and Legislative Affairs to obstruct the Committee's oversight visits to observe the first day of the \$47 bil-

³⁵ Transcript at 85, Donald J. Trump, et al. v. Deutsche Bank AG, et al., 19 Civ. 3826 (ER) (S.D.N.Y. May 22, 2019).

³⁶ Letter from Elijah E. Cummings, Chairman, H. Comm. on Oversight and Reform, to Victor Wahba, Chairman and Chief Executive Officer, Mazars USA LLP (Mar. 20, 2019), available at <https://www.documentcloud.org/documents/5782258-2019-03-20-EEC-to-Wahba-Mazars.html>.

³⁷ Letter from Jerry D. Bernstein, Counsel for Mazars USA LLP, to Elijah E. Cummings, Chairman, H. Comm. on Oversight and Reform (Mar. 27, 2019) available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2019-03-20.EEC%20to%20Wahba-Mazars.pdf>.

lion MISSION Act rollout—which changes the way in which VA manages its network of private doctors and health care providers and makes veterans eligible to receive treatment from private doctors.

Veterans' Affairs Committee professional staff members who visited the Medical Center in San Juan, Puerto Rico on June 6, 2019, were not permitted to meet with the facility or regional emergency management directors to discuss emergency response management and disaster preparedness for hurricane season. The facility spokesperson informed Committee staff that no one is more prepared for a natural disaster than the Medical Center in San Juan, but refused to answer questions or elaborate on any measures or steps the facility has taken to prepare, or any measures taken since Hurricane Maria.

At four of the five VA hospitals visited by committee personnel on June 6, staff were prevented from speaking with key employees who would be able to answer questions about VA-wide problems with the IT system hospital staff must use to determine if a veteran is eligible to see a private doctor or calculate the time it would take for a patient to drive to a facility. System-wide glitches were reported throughout the day. Committee staff were prevented from speaking to employees about the training and materials they received to make rollout of the program a success and were not permitted to tour past the hospital lobby and waiting area.³⁸

g. Slowing the Response to Natural Disasters

The Administration's continued stonewalling is preventing investigations into our nation's response to natural disasters that have impacted millions of Americans. For example, the Committee on Oversight and Reform is investigating the Administration's response to Hurricanes Maria and Irma in Puerto Rico and the Virgin Islands. The Committee started this investigation last Congress, on October 11, 2017, with bipartisan requests for information. Notwithstanding the bipartisan nature of the requests, the White House has failed to turn over a single piece of paper to the Committee, including information responsive to its most recent request dated May 6, 2019.³⁹

h. Cruel Immigration, Family Separation, and Border Wall Policies

Rather than work with Congress to find long term solutions to the problems at our southern border and other challenges currently facing our immigration system, the Trump Administration has instituted a series of troubling policies, such as separating minor children from their families to deter asylum seekers from seeking refuge in the United States. On January 11,⁴⁰ and May 29, 2019,⁴¹

³⁸ V.A. Prepares for Major Shift in Veterans' Health Care (June 5, 2019) (online at <https://www.nytimes.com/2019/06/05/us/politics/va-health-care-veterans.html>).

³⁹ Letter from Elijah E. Cummings, Chairman, H. Comm. on Oversight and Reform, et al, to Mick Mulvaney, Acting Chief of Staff, The White House (May 6, 2019) available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-05-06.COR%20Dems%20to%20Mulvaney-WH%20re%20Hurricanes%20Irma%20and%20Maria.pdf>.

⁴⁰ Letter from Jerrold Nadler, Chairman, H. Comm. on Judiciary, to Matthew Whitaker, Acting Attorney General, Dept. of Justice (Jan. 11, 2019) available at <https://judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/Chairman%20Nadler%201.11%20Letter%20to%20Acting%20AG%20Whitaker.pdf>.

⁴¹ Letter from Jerrold Nadler, Chairman, H. Comm. on Judiciary, to William Barr, Attorney General, Dept. of Justice (May 29, 2019).

the Committee on the Judiciary requested documents from the Department of Justice relating to the Administration's cruel family separation (or "zero tolerance") policy, including information on the Department's involvement in the initial pilot program, reunification strategies, migrant detention, and other border-related policies. Despite the Department identifying over two dozen custodians for production, it has provided less than 750 pages of heavily redacted emails and publicly available court filings. On April 16⁴² and May 29, 2019,⁴³ the Committee on the Judiciary requested information from the Department of Homeland Security (DHS) regarding President Donald Trump's alleged offers of presidential pardons to Acting DHS Secretary Kevin McAleenan and other DHS personnel in response to potential legal liability related to closing the southern border and summarily denying asylum seekers entry into the United States. The Judiciary Committee has not received a response to this request.

The Committees on Oversight and Reform, Judiciary, and Homeland Security are investigating the Trump Administration's unlawful plan to release detained immigrants into sanctuary cities as a form of retribution against the President's political adversaries. In connection with this and related investigations, the Committees requested documents on April 15, 2019.⁴⁴ The White House has not responded. On April 17, 2019, the Committee on Oversight and Reform invited Stephen Miller, the White House Senior Policy Advisor charged with handling all immigration and border affairs, to testify at a public hearing.⁴⁵ The White House refuses to make Mr. Miller available to testify.

Over the last several months, the Committee on Appropriations has repeatedly requested information from DHS on its policies and processes for determining when U.S. Customs and Border Protection personnel will separate individuals who present as family units, including requests made by members during the FY 2020 Budget Hearing on the Department of Homeland Security on April 30, 2019. To date, DHS has failed to provide the requested information on the criteria used for such separations and the related guidance issued to field personnel. Additionally, DHS has failed to provide information on how it defines a family for purposes of separation decisions; the level of criminality that may serve as the basis for separating a child from an adult; and whether its definition of a "fraudulent family" includes individuals who are genetically or legally related but are not considered a family under U.S. law. DHS

⁴² Letter from Jerrod Nadler, Chairman, H. Comm. on Judiciary, Zoe Lofgren, Chairwoman, H. Comm. on Judiciary, Sub. Comm. on Immigration and Citizenship, and Steve Cohen, Chairman, H. Comm. on Judiciary, Sub. Comm. on Constitution, Civil Rights, and Civil Liberties, to Kevin McAleenan, Acting Secretary, Dept. of Homeland Security (April 16, 2019) *available at* <https://judiciary.house.gov/news/press-releases/nadler-lofgren-and-cohen-look-for-documents-and-testimony-president-trump-s-reported>.

⁴³ Letter from Jerrold Nadler, Chairman, H. Comm. on Judiciary, to Kevin McAleenan, Acting Secretary, Dept. of Homeland Security (May 29, 2019).

⁴⁴ Letter from Elijah E. Cummings, Chairman, H. Comm. on Oversight and Reform, Jerrold Nadler, H. Comm. on Judiciary, Chairman, and Bennie G. Thompson, Chairman, H. Comm. on Homeland Security, to Mick Mulvaney, Acting Chief of Staff, The White House, and Kevin McAleenan, Acting Secretary, Dept. of Homeland Security (April 15, 2019) *available at* <https://judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/Nadler%20C%20Cummings%20and%20Thompson%20letter%20to%20DHS%20%26%20WH.pdf>.

⁴⁵ Letter from Elijah E. Cummings, Chairman, H. Comm. on Oversight and Reform, to Stephen Miller, Senior Policy Advisor, The White House (April 17, 2019) *available at* <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-04-17.EEC%20to%20Stephen%20Miller%20re%20Witness%20Invite.pdf>.

has also stated that smugglers are pairing some children with unrelated adults multiple times, but has provided no documentation of this practice.

The Administration has also ignored Congressional inquiries for information related to section 2808 emergency construction authority. For example, at the February 27, 2019 hearing on the President's 2019 National Emergency Declaration Circumventing Congress to Build a Border Wall & its Effect on Military Construction and Readiness, the Committee on Appropriations requested relevant information from the Department of Defense on the selection process for projects that will be used as a source for the border wall. The Department has not provided any information in response to the Committee's request. In addition to the hearing, the Committee on Appropriations, along with the House Armed Services Committee, sent a letter on March 7, 2019, to the Acting Secretary of Defense, requesting information related to the planning and use of section 2808 emergency construction authority.⁴⁶ However, the Department has yet to provide all the information requested in this letter and has not explained why the Department has failed to respond to all elements included in the letter.

i. Obstructing Oversight of Foreign Policy

The Trump Administration's obstruction goes beyond the domestic issues in our country and extends into foreign policy. For example, the White House and State Department have failed to produce a single document, make any witnesses available, or answer written questions in response to request letters sent on February 21⁴⁷ and March 4,⁴⁸ from the Chairs of the Foreign Affairs, Oversight and Reform, and Intelligence Committees for information related to President Trump's communications with Russian Federation President Vladimir Putin. As part of this effort, the Committees are investigating press reports that President Trump may have violated the Presidential Records Act (PRA) by destroying documents to keep the details of his meetings with Putin secret. The White House Counsel issued a response on March 21, criticizing the Chairmen's inquiry and refusing to cooperate. This is despite the fact that several requests in the March 4 letter are for materials in the control of the White House and State Department and that they would be required to keep under the Federal Records Act. Multiple requests to the Department for an update on this request

⁴⁶Letter from Adam Smith, Chairman, H. Comm. on Armed Services, Nita Lowey, Chairwoman, H. Comm. on Appropriations, John Garamendi, Chairman, H. Comm. on Armed Services, Sub. Comm. on Readiness, Peter Visclosky, Chairman, H. Comm. on Appropriations, Sub. Comm. on Defense, Debbie Wasserman Schultz, Chairwoman, H. Comm. on Appropriations, Sub. Comm. on Military Construction, Veterans Affairs, and Related Agencies, to Patrick Shanahan, Acting Secretary, Dept. of Defense (Mar. 7, 2019) available at <https://appropriations.house.gov/news/press-releases/house-democrats-demand-information-on-use-of-pentagon-funds-for-trump-s-border>.

⁴⁷Letter from Elijah E. Cummings, Chairman, H. Comm. on Oversight and Reform, Eliot Engel, Chairman, H. Comm. on Foreign Affairs, Adam B. Schiff, Chairman, Perm. Select Comm. on Intelligence, to Mick Mulvaney, Acting Chief of Staff, The White House (Feb. 21, 2019) available at https://intelligence.house.gov/uploadedfiles/20190221_-_hfac-cor-hpsci_letter_to_white_house_re_pra.pdf.

⁴⁸Letter from Elijah E. Cummings, Chairman, H. Comm. on Oversight and Reform, Eliot Engel, Chairman, H. Comm. on Foreign Affairs, Adam B. Schiff, Perm. Select Comm. on Intelligence, Chairman, to Mick Mulvaney, Acting Chief of Staff, The White House (Mar. 4, 2019) available at https://intelligence.house.gov/uploadedfiles/03-04-19_engel-cummings-schiff-letter-to-mick-mulvaney-requesting-white-house-putin-interview-documents.pdf.

have simply gone unanswered, and the Department has made no efforts to engage in the accommodations process.

In another example, the Chairs of the Foreign Affairs, Intelligence, and Armed Services Committees expressed concern in a May 16 letter about abuse of classification and politicization of intelligence regarding Iran and other countries in the State Department's annual arms control report released in April of this year.⁴⁹ While the Administration has agreed to provide an interagency staff-level briefing, it has failed to produce any documents about the drafting process or the underlying factual information and analysis that informed the report's conclusions—conclusions which many observers interpreted as laying the groundwork for justifying military action against countries covered in the report.

The Committee on Oversight and Reform is investigating allegations made by multiple whistleblowers about efforts inside the White House to rush the transfer of highly sensitive U.S. nuclear technology to Saudi Arabia. The White House has not produced a single document despite the Committee's request on February 19, 2019.⁵⁰

j. Preventing White House Oversight

Across the board, in every investigation, regardless of topic, the White House itself has to date refused to produce a single document to the Oversight and Reform Committee. During this unprecedented obstruction, the White House has challenged Congress' core authority to conduct oversight under the Constitution, questioned the legislative bases for congressional inquiries, objected to committee rules and precedents that have been in place for decades under both Republican and Democratic leadership, and made baseless legal arguments to avoid producing documents and testimony.

The Committee on Oversight and Reform is investigating the White House and Transition Team security clearance process. While the White House has allowed the Committee to review *in camera* a limited number of policy-related documents, it has failed to turn over a single page of paper responsive to the Committee's requests dated December 19, 2018, January 23, 2019, February 11, 2019, March 1, 2019.⁵¹

The Committee is investigating the use of personal email and messaging accounts by non-career officials at the White House in

⁴⁹ Letter from Eliot L. Engel, Chairman, H. Comm. on Foreign Affairs; Adam Smith, Chairman, H. Comm. on Armed Services; and Adam Schiff, Chairman, H. Perm. Select Comm. on Intelligence, to Mike Pompeo, Secretary, Department of State (May 16, 2019) available at <https://intelligence.house.gov/uploadedfiles/hfac-hasc-hpsci-pompeo-letter.pdf>.

⁵⁰ Letter from Elijah E. Cummings, Chairman, H. Comm. on Oversight and Reform, to Mick Mulvaney, Acting Chief of Staff, The White House (Feb. 19, 2019) available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-02-19.EEC%20to%20Mulvaney-WH%20re%20IP3.pdf>.

⁵¹ Letter from Elijah E. Cummings, Ranking Member, H. Comm. on Oversight and Gov't. Reform, to John Kelly, Chief of Staff, The White House (Dec. 19, 2018) available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2018-12-19.EEC%20to%20Kelly-WH%20re%20Security%20Clearances-Jan.2017.Updated.pdf>; Letter from Elijah E. Cummings, Chairman, H. Comm. on Oversight and Reform, to Pat Cipollone, Counsel to the President (Jan. 23, 2019) available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-01-23.EEC%20to%20Cipollone-WH%20re%20Security%20Clearances.pdf>; Letter from Elijah E. Cummings, Chairman, H. Comm. on Oversight and Reform, to Pat Cipollone, Counsel to the President (Feb. 11, 2019) available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-02-11.EEC%20to%20Kline%20re%20Transcribed%20Interview.1.pdf>; Letter from Elijah E. Cummings, Chairman, H. Comm. on Oversight and Reform, to Pat Cipollone, Counsel to the President (Mar. 1, 2019) <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2019-03-01.EEC%20to%20Cipollone-WH%20re%20Security%20Clearances.pdf>.

violation of White House policy and the Presidential Records Act. The Committee made bipartisan requests for information and documents dating back to March 8, 2017.⁵² The Committee renewed requests on December 19, 2018 and March 21, 2019, but the White House has failed to produce a single document in response.⁵³

The Committee is investigating the Trump Administration's use of and failure to disclose ethics waivers and authorizations. The Committee requested documents and information on May 16, 2019.⁵⁴ The White House has not responded to the Committee's request.

The Committee is investigating White House officials' use of government-owned aircraft for personal travel and private non-commercial aircraft for official travel. Launched as a bipartisan investigation under then-Chairman Gowdy, the Committee renewed its requests for documents and information on December 19, 2018.⁵⁵ The White House has not provided any documents in response to this request and has instead directed the Committee to secure the documents and information from executive branch federal agencies.

The Committee is investigating the use of nondisclosure agreements imposed on White House staff and whether these gag orders include mandatory language safeguarding the rights of federally-protected whistleblowers to report waste, fraud, and abuse to Congress. The White House has failed to respond to the Committee's March 20, 2018 and May 14, 2019, requests for documents.⁵⁶

k. Persistent Oversight Obstruction by the Trump Administration

These examples, while numerous, do not begin to encompass every way in which the Trump Administration is obstructing constitutional oversight activities by the House. These examples paint a stark picture of the depths to which the Trump Administration has gone, and continues to go, in refusing to respect the system of checks and balances established in our Constitution. The obstruction touches every corner of this Administration and, in the process, the American people are not able to get the answers they need on important issues. Of specific note and importance, discussed in

⁵² Letter from Elijah E. Cummings, Ranking Member, H. Comm. on Oversight and Gov't. Reform, Senator Elizabeth Warren, and Senator Tom Carper, to Stefan Passantino, Deputy Counsel to the President (Mar. 8, 2017) *available at* https://www.warren.senate.gov/files/documents/2017_03_08_Letter_on_Kushner_Recusals.pdf.

⁵³ Letter from Elijah E. Cummings, Ranking Member, H. Comm. on Oversight and Gov't. Reform, to Pat Cipollone, Counsel to the President (Dec. 19, 2018) *available at* <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2018-12-19.EEC%20to%20Cipollone-WH%20re%20Private%20Emails.pdf>; Letter from Elijah E. Cummings, Chairman, H. Comm. on Oversight and Reform, to Pat Cipollone, Counsel to the President (Mar. 21, 2019) *available at* <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-03-21.EEC%20to%20Cipollone-WH.pdf>.

⁵⁴ Letter from Elijah E. Cummings, Chairman, H. Comm. on Oversight and Reform, to Pat Cipollone, Counsel to the President (May 16, 2019) *available at* <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-05-16.EEC%20to%20Cipollone-WH%20re%20Ethics%20Waivers.pdf>.

⁵⁵ Letter from Elijah E. Cummings, Ranking Member, H. Comm. on Oversight and Gov't. Reform, to John Kelly, Chief of Staff, The White House (Dec. 19, 2018) *available at* <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/UPDATED%20White%20House%20and%20Cabinet%20Member%20Travel.pdf>.

⁵⁶ Letter from Elijah E. Cummings, Ranking Member, H. Comm. on Oversight and Gov't. Reform, and Jerrold Nadler, Ranking Member, H. Comm. on Judiciary, to John Kelly, Chief of Staff, The White House (Mar. 20, 2018) *available at* <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2018-03-20..EEC%20%20Nadler%20to%20WH%20re%20NDAs.pdf>; Letter from Elijah E. Cummings, Chairman, H. Comm. on Oversight and Reform, to Mick Mulvaney, Acting Chief of Staff, The White House (May 14, 2019) *available at* <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-05-14.EEC%20to%20Mulvaney-WH%20re%20NDAs.pdf>.

the next section, is the Trump Administration's refusal to provide all of the documents surrounding the investigation into Russian interference in the 2016 U.S. Presidential election and the obstruction of justice that occurred in the wake of that interference.

The Mueller Report and Obstruction of Justice

The first resolved clause of H. Res. 430 authorizes the Committee on the Judiciary to undertake several legal actions. These actions, commonly referred to as "civil contempt,"⁵⁷ include the power to initiate or intervene in federal judicial proceedings (1) to enforce the Committee's subpoena issued to Attorney General William P. Barr for the Mueller Report as well as key underlying evidence; (2) to enforce its subpoena issued to former White House Counsel Donald F. McGahn for both documents and testimony; and (3) to petition for disclosure of information relating to the Mueller Report otherwise protected by the grand jury secrecy rules, including where that information is sought "preliminary to . . . a judicial proceeding."

The Judiciary Committee is seeking these materials in the wake of Special Counsel Mueller's findings that, not only did Russia interfere in our elections, but that the President engaged in multiple acts to exert undue influence over law enforcement investigations. More than 1000 former federal prosecutors from across the political spectrum have written that such conduct, but for the Office of Legal Counsel policy against charging sitting presidents, would have resulted in the indictment of Donald Trump for serious crimes.⁵⁸ The Judiciary Committee's effort to obtain these materials is consistent with the views expressed by the House in H. Con. Res. 24, which passed unanimously and called for "the full release to Congress of any report, including findings, Special Counsel Mueller provides to the Attorney General."⁵⁹

The specific details surrounding the Barr subpoena are detailed in House Report 116–105 ("contempt report"), which was approved by the Judiciary Committee by a vote of 24–16 on May 8, 2019. The contempt report details the Judiciary Committee's attempts to engage the Justice Department (DOJ) to reach a mutually acceptable accommodation regarding access to the Mueller Report. Since that time, the Judiciary Committee has repeatedly made good faith efforts to accommodate.⁶⁰

Both during and after its markup, the Judiciary Committee has also made clear that it could not accept President Trump's assertion of "executive privilege over the entirety of the subpoenaed ma-

⁵⁷ See *supra* note 1.

⁵⁸ *Statement by Former Federal Prosecutors* (May 6, 2019) (online at <https://medium.com/@djalumni/statement-by-former-federal-prosecutors-8ab7691c2aa1>).

⁵⁹ Roll Call Number 125, 116th Cong. (Mar. 14, 2019) 420–0, 4 present.

⁶⁰ Beginning with a May 10 letter to Attorney General Barr, the Judiciary Committee has continued to seek an accommodation with the Department. On May 16, 2019, in a letter to White House Counsel Pat Cipollone, the Judiciary Committee further affirmed that the Committee's staff is "prepared at any time to resume discussions regarding the open issues related to the [Barr Subpoena], as well as the many other outstanding requests." On May 24, 2019 the Judiciary Committee wrote to both Attorney General Barr and the White House Counsel Cipollone to make yet another effort at accommodation over the subpoena for the Mueller Report. In that letter, the Committee unilaterally offered to reduce its request to a discrete list of fewer than 100 documents specifically cited in Volume II of the Mueller Report. On June 4, 2019, the Department responded that it would resume negotiations only if the Committee agreed to "moot[]" its May 8 contempt vote and "remov[e] any imminent threat" to hold the Attorney General in contempt.

terials,” and that this was a “protective assertion” of the privilege.⁶¹ On May 10, 2019 the Judiciary Committee further explained that DOJ’s reliance on the actions of President Clinton in 1996 were misplaced and inappropriate.⁶² On May 15, the Judiciary Committee held a hearing on the issue of executive privilege and several of the witnesses—the majority of whom were not only legal scholars but had previously served as Executive Branch lawyers—questioned the appropriateness of the President’s assertion of executive privilege.⁶³

It is also important to note that the Judiciary Committee has never suggested it was holding Attorney General Barr in contempt for failing to unilaterally release grand jury material. As explained in the Judiciary Committee’s May 16 letter to Mr. Cipollone: the subpoena recognizes in the instructions that DOJ may withhold any document which it believes there is a valid reason not to produce. The Committee was requesting only that DOJ join in an application to the Court for authorization to release documents withheld pursuant to Rule 6(e). The Committee did not pursue contempt based on the DOJ’s refusal to join in that application, which was made clear in the bipartisan support for an amendment reinforcing that the contempt was not based on Rule 6(e).⁶⁴ In this regard, it is our expectation that, if so requested, a court would hold that the Judiciary Committee is entitled as a matter of law to have access to grand jury materials currently being withheld by the Justice Department.

With respect to Mr. McGahn, on April 22, 2019, Chairman Nadler issued a subpoena for testimony and documents related to the Committee’s investigation following the public release of the redacted Mueller Report, which revealed that Mr. McGahn was a witness to multiple instances of potential obstruction of justice.⁶⁵ The subpoena requested that Mr. McGahn produce documents shared with him or his counsel by the White House during the Special

⁶¹ The Judiciary Committee ultimately rejected the President’s assertion of privilege as insufficient grounds for noncompliance with the Committee’s subpoena. The Committee voted 20–12 to adopt an amendment to the contempt report offered by Chairman Nadler stating, among several concerns, that “the purported protective assertion is not a valid claim of privilege, including because executive privilege has been broadly waived in this case as a matter of law and fact” and concluding “the last-minute claims of the ‘protective’ blanket assertion of executive privilege over the entirety of the subpoenaed materials does not change the fact that Attorney General William P. Barr is in contempt of Congress today for failing to turn over lawfully subpoenaed documents.”

⁶² In that case, the White House had been producing relevant documents to Congress on a rolling basis for nearly a year but required a limited amount of time to review certain additional documents before a scheduled deadline. Just fifteen days later, the White House completed its review and created a privilege log identifying specific documents to be withheld; it then provided 1,000 pages of remaining documents to Congress. In addition, the documents withheld were not created contemporaneously to the matter under investigation and the White House had not already waived executive privilege as it has here. Moreover, the assertion was not a product of a Presidential declaration to fight all congressional subpoenas. As the court held in *Committee on Oversight & Government Reform v. Lynch*, a “blanket assertion of privilege over all records generated after a particular date . . . [will not] pass muster,” without a “showing . . . that any of the individual records satis[fy] the prerequisites for the application of the privilege.”

⁶³ Executive Privilege and Congressional Oversight: Hearing Before the H. Comm. on the Judiciary, 116 Cong. (2019).

⁶⁴ At its markup the Judiciary Committee adopted an amendment offered by Rep. Matt Gaetz (R-FL) adding a rule of construction to the contempt report providing that “[n]o provision in this Resolution or Report shall be construed as a directive for the Attorney General to violate Federal law or rules, including but not limited to Rule 6 of the Federal Rules of Criminal Procedure.”

⁶⁵ Subpoena by Authority of the House of Representatives of the United States of America to Donald F. McGahn for documents and testimony, signed by Representative Jerrold Nadler, April 22, 2019, available at <https://judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/McGahn%20Subpoena%204.22.19.pdf>.

Counsel's investigation by May 7, 2019 and appear to testify before the Committee on May 21, 2019. On May 7, counsel to Mr. McGahn informed the Committee that the White House had instructed him not to produce the requested documents "because they implicate significant Executive Branch confidentiality interests and executive privilege."⁶⁶ In its response letter, the Committee disputed the validity of the White House's invocation of executive privilege and insisted that Mr. McGahn comply with the subpoena.⁶⁷ On May 21, 2019, the Judiciary Committee held its scheduled hearing on "Oversight of the Report by Special Counsel Robert S. Mueller, III: Former White House Counsel Donald F. McGahn, II."⁶⁸ Mr. McGahn did not appear at the hearing. Since that time, the Judiciary Committee has continued its efforts to reach an accommodation with Mr. McGahn.⁶⁹

⁶⁶Letter from William A. Burck to Jerrold Nadler, Chairman, H. Comm. on the Judiciary (May 7, 2019). Based on that direction, counsel for Mr. McGahn stated his position that, where "co-equal branches of government are making contradictory demands on Mr. McGahn concerning the same set of documents, the appropriate response for Mr. McGahn is to maintain the status quo unless and until the Committee and the Executive Branch can reach an accommodation" and, therefore, Mr. McGahn would not comply with the subpoena. White House Counsel Cipollone also wrote the Judiciary Committee on May 7 to inform the Committee that "[t]he White House records remain legally protected from disclosure under longstanding constitutional principles, because they implicate significant Executive Branch confidentiality interest and executive privilege." Letter to Jerrold Nadler, Chairman, H. Comm. on the Judiciary, from Pat Cipollone, Counsel to the President (May 7, 2019).

⁶⁷Letter to William A. Burck, Quinn Emanuel Urquhart & Sullivan, from Jerrold Nadler, Chairman, H. Comm. on the Judiciary (May 7, 2019). The Committee's letter noted that "[a]n initial matter, regarding the subpoenaed documents, the White House Counsel's letter did not actually invoke executive privilege, but rather merely suggested . . . that all requested documents implicate significant Executive Branch confidential interests and executive privilege." The letter further explained that "a subpoena recipient is not excused from compliance with [a] Committee's subpoena by virtue of a claim of executive privilege that may ultimately be made" (citing *Mem. Op., Comm. on Judiciary v. Miers*, No. 08-cv-0409-JDB (D.D.C. Jul. 31, 2008), at 91); nor can "a blanket assertion of privilege over all records generated after a particular date . . . pass muster," without a "showing . . . that any of the individual records satisfy] the prerequisites for the application of the privilege." (citing *Committee on the Judiciary, U.S. House of Representatives v. Miers*, 558 F. Supp. 2d 53 (D.D.C. 2008)). The letter additionally explained that even if the President were to properly invoke privilege, any executive privilege has been waived as to documents "that the White House voluntarily disclosed to Mr. McGahn and his counsel," as affirmed by the in D.C. Circuit in *In re Sealed Case (Espy)*, 121 F.3d 729, 741-42 (D.C. Cir. 1997) ("[T]he White House waive[s] its claims of privilege in regard to specific documents that it voluntarily reveal[s] to third parties outside the White House.") As to Mr. McGahn's own document production obligations, the letter reminded Mr. McGahn that the subpoena directly requires a privilege log for any document that is "withheld in full or in part on any basis," including on "the basis of a privilege asserted by or on behalf of the White House, or at the request of the White House," and that "any objections or claims of privilege are waived" upon failure to provide "an explanation of why full compliance is not possible and a log identifying with specificity the ground(s) for withholding each withheld document prior to the request compliance date."

⁶⁸On May 20, 2019, Mr. Cipollone wrote to the Judiciary Committee, stating that the Department of Justice "advised" him that "Mr. McGahn is absolutely immune from compelled congressional testimony with respect to matters occurring during his service as a senior adviser to the President" and that, because "of this constitutional immunity, and in order to protect the prerogatives of the Office of the Presidency, the President has directed Mr. McGahn not to appear at the Committee's scheduled hearing on Tuesday, May 21, 2019." Letter to Jerrold Nadler, Chairman, H. Comm. on the Judiciary, from Pat Cipollone, Counsel to the President (May 20, 2019). The letter attached an opinion from the Office of Legal Counsel, dated May 20, 2019, advising that "Congress may not constitutionally compel the President's senior advisers to testify about their official duties." *Mem. Op., Re: Testimonial Immunity Before Congress of the Former Counsel to the President*, Office of Legal Counsel (May 20, 2019).

⁶⁹In a May 31, 2019 letter to Mr. McGahn and Mr. Cipollone, the Judiciary Committee's expressed willingness "to discuss any reasonable accommodation(s) that would facilitate Mr. McGahn's appearance before the Committee." These accommodations included "limiting the testimony to the specific events detailed in the Special Counsel's report, identifying with greater specificity the precise areas of intended inquiry, and agreeing to the presence of White House counsel during any testimony, so that Mr. McGahn may consult regarding the assertion of executive privilege."

Bipartisan Legal Advisory Group and Subpoena Enforcement

The second resolved clause of H. Res. 430 reaffirms that committee chairs, when authorized by the Bipartisan Legal Advisory Group (BLAG), retain the ability to bring litigation in Federal court to enforce their subpoenas, commonly referred to as “civil contempt” proceedings.⁷⁰ While the full House can vote to authorize a committee to seek relief from federal courts to enforce a subpoena duly issued by that committee, it is also important to note that this is not the only avenue for such authorization available to a committee. Pursuant to clause 8(b) of rule II of the House of Representatives, the BLAG, comprised of the Speaker and the majority and minority leaderships, speaks for and articulates the institutional position of the House in all litigation matters; this includes authorizing a committee to seek civil enforcement of its duly issued subpoena. As articulated by the Chair of the Committee on Rules in a Congressional Record statement from January 3, 2019, on civil enforcement of subpoenas pursuant to clause 8(b) of rule II:

Pursuant to this provision, the Bipartisan Legal Advisory Group (BLAG) is delegated the authority to speak for the full House of Representatives with respect to all litigation matters. A vote of the BLAG to authorize litigation and to articulate the institutional position of the House in that litigation, is the equivalent of a vote of the full House of Representatives. For example, in the 115th Congress, the BLAG, pursuant to Rule II(8)(b), authorized House Committees to intervene in ongoing litigation. The BLAG has been delegated this authority for all litigation matters, and I want to be clear that this includes litigation related to the civil enforcement of a Committee subpoena. If a Committee determines that one or more of its duly issued subpoenas has not been complied with and that civil enforcement is necessary, the BLAG, pursuant to House Rule II(8)(b), may authorize the House Office of General Counsel to initiate civil litigation on behalf of this Committee to enforce the Committee’s subpoena(s) in federal district court.⁷¹

Use of the BLAG to authorize a committee to seek relief from a federal court to enforce a subpoena duly issued by that committee is instrumental in ensuring the House is able to protect its constitutional duty to conduct effective oversight of the Executive Branch. Given the unprecedented and systemic way in which the Trump Administration has refused to comply with duly issued congressional subpoenas thus far, there is no reason to believe the Executive Branch will change course. As such, the BLAG, speaking for the House, provides the most efficient way for the House to combat this widespread and unprecedented obstruction going forward, providing committees an avenue to enforce their subpoenas, while still providing the institution with the time to pursue its other constitutional duties.

It is important to note that House committees have previously been found by the courts to have legal standing to seek relief from

⁷⁰ See *supra* note 1.

⁷¹ 165 Cong. Rec. 1, H30 (daily ed. Jan. 3, 2019) (statement of Chairman James P. McGovern)

federal courts to enforce their subpoenas. The Court of Appeals for the D.C. Circuit has recognized “that the House as a whole has standing to assert its investigatory power, and can designate a member to act on its behalf.”⁷² Moreover, federal district courts in the past have found that a standing committee has legal standing to pursue relief in court, and have ruled in favor of committees alleging injuries nearly identical to those that would be alleged in a lawsuit to enforce compliance with a subpoena as authorized by this resolution.

In *Committee on the Judiciary v. Miers*, the Judiciary Committee, as part of its investigation into the politically motivated firing of several U.S. Attorneys by the George W. Bush Administration, sought civil enforcement of its subpoena in federal court. The district court ruled for the Committee, holding it had standing to enforce its subpoena. The court rejected the White House’s claim of absolute immunity from testimony, and ordered the production of a “detailed list and description” of the documents “with[el]d on the basis of executive privilege sufficient to enable resolution of any privilege claims.”⁷³

Similarly, in *Committee on Oversight & Government Reform v. Holder*, the Committee on Oversight and Government Reform investigated “Operation Fast and Furious” and related operations by the ATF and U.S. Attorney’s Offices designed to track illegal gun sales to Mexican gun cartels. After having received some documents from the Department of Justice responsive to its requests, the Oversight Committee subpoenaed a lengthy and comprehensive set of documents. On June 19, 2012, President Obama asserted privilege over these documents; Attorney General Holder was thereafter held in contempt by the House; and the Oversight Committee pursued a civil action to obtain access to the documents. Agreeing with *Miers*, the District Court made clear that the Oversight Committee had standing to enforce its subpoena and the court had authority to decide the case.⁷⁴

HOUSE’S COMMITMENT TO RESPONSIBLE ARTICLE I OVERSIGHT

The third resolved clause of H. Res. 430 specifies that standing and permanent select committees seeking to enforce their subpoenas in court under the Resolution have any and all necessary authority under Article I of the Constitution. The authority is included because of widespread and credible allegations of misconduct and abuse of power by President Trump as well as the President’s extreme if not unprecedented actions seeking to cover up and obstruct committee investigations. President Trump has openly declared his opposition to, and intent to block, Congress’ exercise of its constitutional, legislative, and oversight responsibilities. Earlier this year, he vowed, “We’re fighting all the subpoenas,” and “I don’t want people testifying.”⁷⁵

⁷² *United States v. AT&T*, 551 F.2d 384, 391 (D.C. Cir. 1976).

⁷³ *Comm. on Judiciary v. Miers*, 558 F.Supp. 2d 53, 107 (D.D.C. 2008). While the Obama Administration and House of Representatives negotiated a resolution without an appellate resolution, the district court’s decision, at the House’s insistence, was not withdrawn. IRVIN B. NATHAN, PROTECTING THE HOUSE’S INSTITUTIONAL PREROGATIVE TO ENFORCE ITS SUBPOENAS (The Constitution Project—When Congress Comes Calling, 2nd ed., 2017), available at <https://constitutionproject.org/wp-content/uploads/2017/05/HouseSubpoenas.pdf>.

⁷⁴ See *Comm. on Oversight & Gov’t Reform v. Holder*, 979 F. Supp. 2d 1, 9–26 (D.D.C. 2013).

⁷⁵ See *supra* note 2.

As the Supreme Court has repeatedly affirmed, the “scope of [Congress’s] power of inquiry . . . is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution.”⁷⁶ It “has been employed by Congress throughout our history, over the whole range of national interests concerning which Congress might legislate or decide upon due investigation not to legislate.”⁷⁷ Moreover, the “power to secure needed information” through compulsory process, when needed, is “an essential and appropriate auxiliary to the legislative function.”⁷⁸ Without access to necessary information, Congress would be unable to “legislate widely or effectively.”⁷⁹ Additionally, neither the Executive Branch nor the courts may second-guess or “test[] the motives” of Congress when Congress seeks to enforce its subpoena authority.⁸⁰

Accordingly, this resolved clause is intended to make clear that the committees have “all necessary authorities under Article I” to enforce subpoenas for witnesses and documents. To the extent any issues arise that concern overlapping areas of jurisdiction among the committees, or uncertainties regarding committees’ respective jurisdictions, this clause confirms that each committee has the full authority of the House of Representatives to enforce its subpoenas. Committees may, in connection with exercising their authority under this resolved clause, choose to specify the precise constitutional powers upon which they are relying, as well as the legitimate legislative purposes and details of their work within the full bounds of their authority under Article I, whether at or in connection with hearings, in Committee reports, memoranda, or through other means.

An example of a Committee being able to use “all necessary authority under Article I of the Constitution” is illustrated by the Judiciary Committee’s contempt report, 116–105, which explained the purposes of its investigation include: “(1) investigating and exposing any possible malfeasance, abuse of power, corruption, obstruction of justice, or other misconduct on the part of the President or other Members of his Administration; 2) considering whether the conduct uncovered may warrant amending or creating new federal authorities, including among other things, relating to election security, campaign finance, misuse of electronic data, and the types of obstructive conduct that the Mueller Report describes; and 3) considering whether any of the conduct described in the Special Counsel’s Report warrants the Committee in taking any further steps under Congress’ Article 1 powers.” The Judiciary Committee’s report states that this includes whether to recommend “articles of impeachment with respect to the President or any other Administration official, as well as the consideration of other steps such as censure or issuing criminal, civil or administrative referrals.” The Committee further noted that, “No determination has been made as to such further actions, and the Committee needs to review the unredacted report, the underlying evidence, and associated docu-

⁷⁶ *Eastland v. U.S. Servicemen’s Fund*, 421 U.S. 491, 50 n.15 (1975).

⁷⁷ *Barenblatt v. United States*, 360 U.S. 109, 111 (1959).

⁷⁸ *McGrain v. Daugherty*, 273 U.S. 135, 161, 174 (1927); see also *Eastland*, 421 U.S. at 504 (“[i]ssuance of subpoenas . . . has long been held to be a legitimate use by Congress of its power to investigate”).

⁷⁹ *McGrain*, 273 U.S. at 175.

⁸⁰ *Watkins v. United States*, 354 U.S. 178, 200 (1957); see also *McGrain*, 273 U.S. at 178 (“[w]e are bound to presume that the action of the legislative body was with a legitimate legislative object” (internal quotations omitted)).

ments so that it can ascertain the facts and consider its next steps.”⁸¹ As noted above, this resolution also authorizes the Judiciary Committee to assert in court that it is seeking information preliminary to a judicial proceeding.

Use of the full range of Article I authorities under this Resolution is necessary to address the President and his Administration’s extensive efforts to stonewall congressional oversight and to block enforcement of congressional subpoenas.⁸² These measures include the unprecedented defiance of committee subpoenas on the ground that the committee lacks a “legitimate legislative purpose”⁸³; assertions of executive privilege⁸⁴ and absolute immunity without a valid basis⁸⁵; and withholding of information based on other grounds that lack a statutory basis.⁸⁶

It is in the interests of the House and the committees first and foremost to achieve reasonable and good faith accommodations with the Administration regarding any and all outstanding requests, whether or not they are pursuant to duly issued subpoenas. The record of this Congress as set forth in this report and otherwise make that clear. Those efforts remain ongoing of course. Notwithstanding the provisions of this Resolution, it is to be expected the relevant committees will continue their efforts to reach accommodation whenever possible.

Conclusion

In examining this constant and ongoing stonewalling, it is clear that President Trump and his Administration do not recognize Congress as a co-equal branch of government with independent constitutional oversight authority. The systemic and widespread nature of the obstruction indicates it will continue in both breadth and brazenness. If allowed to go unchecked, the Trump Administration’s obstruction means the end of Congressional oversight and the erosion of the fundamental bedrock principle of checks and balances that anchors our Constitution and form of government. This Democratic Majority is committed to defending Congress’ power as an independent branch of government to hold this or any administration accountable. It is because of this unprecedented stonewalling by the Trump Administration that the House will take the rare and important step to consider this resolution authorizing the Judiciary Committee to enforce its duly issued subpoenas relating to the vitally important Mueller Report and reaffirms that

⁸¹ Contempt report at 21, specifying the scope of the Committee’s investigation with respect to which the information in the Barr and McGahn subpoenas is sought.

⁸² As the Committee on the Judiciary explained when it recommended articles of impeachment against President Richard Nixon, when a President “fail[s] without lawful cause or excuse to produce papers and things as directed by duly authorized subpoenas,” he “violat[es] [] his constitutional duty to take care that the laws be faithfully executed.” The President cannot be permitted to “interpos[e] the powers of the Presidency against the lawful subpoenas of the House of Representatives.” H. Rep. 93-1305 (1974) pp 1-4.

⁸³ Complaint at 3, *Trump v. Comm. on Oversight & Reform of the United States House of Representatives*, No. CV 01136 (“Chairman Cummings’ subpoena of Mazars lacks a legitimate legislative purpose.”).

⁸⁴ Letter to Jerrold Nadler, Chairman, H. Comm. on the Judiciary, from Pat Cipollone, Counsel to the President (May 20, 2019).

⁸⁵ Mem. Op., *Re: Testimonial Immunity Before Congress of the Former Counsel to the President*, Office of Legal Counsel (May 20, 2019).

⁸⁶ Attorney General Barr redacted significant portions of the Mueller Report, for example, on the ground that disclosure of those portions to Congress could harm ongoing law enforcement investigations, compromise personal privacy of third parties, or compromise investigative sources and methods. See Letter to Hon. Jerrold Nadler, Chairman, H. Comm on the Judiciary from William Barr, Attorney General (Mar. 29, 2019).

all committees have the ability, when authorized by the House or the BLAG, to turn to the Federal courts to enforce its subpoenas to get the information they need to conduct effective oversight. House Democrats will continue to legislate, investigate, and litigate within our Constitutional authority and for the American people. House Resolution 430 gets to that end.

HEARINGS

The Committee on Rules did not hold a hearing on this measure. While Sec. 103(i) of H. Res. 6 provides a point of order against any bill or joint resolution reported by committee if the report does not contain a list of relevant committee and subcommittee hearings, which includes the designation of at least one such hearing that was used to develop or consider the underlying measure, as a simple resolution, this measure is not subject to that requirement.

COMMITTEE CONSIDERATION

The Committee on Rules met on June 10, 2019, in open session and ordered H. Res. 430, favorably reported with an amendment to the House by a record vote of 8 yeas and 4 nays, a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report the legislation and amendments thereto. A motion by Mr. Perlmutter to report the resolution, as amended, to the House with a favorable recommendation was agreed to by a record vote of 8 yeas and 4 nays, a quorum being present. The names of Members voting for and against follow:

Rules Committee record vote No. 107

Motion by Mr. Perlmutter to report the resolution, as amended, to the House with a favorable recommendation. Agreed to: 8 yeas and 4 nays.

Majority Members	Vote	Minority Members	Vote
Mr. Hastings		Mr. Cole	Nay
Mrs. Torres	Yea	Mr. Woodall	Nay
Mr. Perlmutter	Yea	Mr. Burgess	Nay
Mr. Raskin	Yea	Mrs. Lesko	Nay
Ms. Scanlon	Yea		
Mr. Morelle	Yea		
Ms. Shalala	Yea		
Mr. DeSaulnier	Yea		
Mr. McGovern, Chairman	Yea		

The committee also considered the following amendments on which record votes were requested. The names of Members voting for and against follow:

Rules Committee record vote No. 99

Motion by Mr. Cole to postpone consideration of H. Res. 430 indefinitely, pursuant to clause 4(a)(7) of House Rule XVI. Not Agreed to: 4 yeas and 8 nays.

Majority Members	Vote	Minority Members	Vote
Mr. Hastings		Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	Yea
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Mr. DeSaulnier	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 100

Amendment to the Amendment in the Nature of a Substitute offered by Mr. Cole to require that before the chair of the Committee on the Judiciary seeks such relief as described in the first resolved clause, he certify in writing to the Clerk of the House that he has personally reviewed all official Government reports related to the subpoena that is the subject of the resolution accompanying House Report 116-105. Not Agreed to: 4 yeas to 8 nays.

Majority Members	Vote	Minority Members	Vote
Mr. Hastings		Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	Yea
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Mr. DeSaulnier	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 101

Amendment to the Amendment in the Nature of a Substitute offered by Mr. Cole to require that before the chair of the Committee on the Judiciary seeks such relief as described in the first resolving clause the chair shall certify in writing to the Clerk of the House of Representatives that he has made a good faith effort to negotiate with the Attorney General regarding such subpoena. Not Agreed to: 4 yeas and 8 nays.

Majority Members	Vote	Minority Members	Vote
Mr. Hastings		Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	Yea
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Mr. DeSaulnier	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 102

Amendment to the Amendment in the Nature of a Substitute offered by Mrs. Lesko to require that the Office of General Counsel of the House of Representatives shall periodically report to the House of Representatives the expenditures incurred with respect to any judicial proceeding initiated or intervened in pursuant to the

authority described in the first resolving clause. Not Agreed to: 4 years and 8 nays.

Majority Members	Vote	Minority Members	Vote
Mr. Hastings		Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	Yea
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Mr. DeSaulnier	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 103

Amendment to the Amendment in the Nature of a Substitute offered by Mr. Burgess to provide that the Office of General Counsel of the House of Representatives may not hire any person who is a registered lobbyist under the Lobbying Disclosure Act of 1995 or who is employed by a lobbying firm (as such term is defined in section 3 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602)). Not Agreed to: 4 years and 8 nays.

Majority Members	Vote	Minority Members	Vote
Mr. Hastings		Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	Yea
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Mr. DeSaulnier	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 104

Amendment to the Amendment in the Nature of a Substitute offered by Mr. Cole to require that in the case of any judicial proceeding initiated or intervened in pursuant to the authority described in the first resolving clause, the Office of General Counsel of the House of Representatives shall provide to the Bipartisan Legal Advisory Group, and make available to any Member of the House of Representatives upon request, a description of, in the opinion of the General Counsel, the likelihood of success on the merits and strategy for addressing the decision of the Court of Appeals for the District of Columbia in *McKeever v. Barr* No. 17-5149 (D.C. Cir. 2019). Not Agreed to: 4 years and 8 nays.

Majority Members	Vote	Minority Members	Vote
Mr. Hastings		Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	Yea
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Mr. DeSaulnier	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 105

Amendment to the Amendment in the Nature of a Substitute offered by Mr. Woodall to provide that 10 days prior to hiring a lawyer or a consultant for the purpose of initiating or intervening in a judicial proceeding pursuant to the authority described in the first or second resolving clause, the Office of General Counsel of the House of Representatives shall provide to the Clerk of the House of Representatives and make available to any Member of the House of Representatives upon request the intended contract containing the terms of hire. Not Agreed to: 4 yeas and 8 nays.

Majority Members	Vote	Minority Members	Vote
Mr. Hastings		Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	Yea
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Mr. DeSaulnier	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 106

Amendment to the Amendment in the Nature of a Substitute offered by Mr. Burgess to require that in the case of any judicial proceeding initiated or intervened in pursuant to the authority described in the first or second resolving clause, the chair of the relevant committee shall provide to the Clerk of the House of Representatives and make available to any Member of the House of Representatives upon request the source of the funds used to pay the costs associated with such judicial proceeding, including any corresponding reduction in the budget of any office or committee. Not Agreed to: 4 yeas and 8 nays.

Majority Members	Vote	Minority Members	Vote
Mr. Hastings		Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	Yea
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Mr. DeSaulnier	Nay		
Mr. McGovern, Chairman	Nay		

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee made findings and recommendations that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

The resolution authorizes the chair of the Committee on the Judiciary, acting on behalf of the committee, to initiate or intervene in any judicial proceeding before a Federal court to seek enforce-

ment of certain subpoenas duly issued by the committee. The resolution reaffirms the ability of any committee and permanent select committee, when authorized by the Bipartisan Legal Advisory Group, to initiate or intervene in any judicial proceeding before a Federal court to seek enforcement of its duly issued subpoena. The resolution also states that, in connection with any judicial proceeding brought under the authorities described, the chair of any standing or permanent select committee has any and all necessary authority under Article I of the Constitution. The resolution requires that when a committee initiates or intervenes in a civil enforcement action in Federal court pursuant to the resolution that the chair of that committee must notify the House.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

SECTION-BY-SECTION ANALYSIS

First Resolved Clause. This clause provides independent authority for the chair of the Committee on the Judiciary, on behalf of the Committee, to initiate or intervene in any judicial proceeding before a Federal court to seek enforcement of the subpoenas duly issued to William P. Barr, Attorney General, U.S. Department of Justice, and Donald F. McGahn, II, former White House Counsel.

Second Resolved Clause. This clause reaffirms that the chair of each standing and permanent select committee, when authorized by the Bipartisan Legal Advisory Group, retains the ability to initiate or intervene in any judicial proceeding before a Federal court on behalf of such committee, to seek the enforcement of any subpoena duly issued by the committee.

Third Resolved Clause. This clause ensures that in connection with any judicial proceedings brought under the authorities described, the chair of any standing or permanent select committee has any and all necessary authority under Article I of the Constitution.

Fourth Resolved Clause. This clause requires that the chair of any standing or permanent select committee notify the House with respect to the commencement of any judicial proceeding pursuant to the authorities described.

Fifth Resolved Clause. This clause allows the Office of the General Counsel, when authorized by the Speaker, to represent any standing or permanent select committee in any judicial proceeding initiated or intervened in pursuant to the authority described in the resolution.

Sixth Resolved Clause. This clause provides that the Office of the General Counsel is authorized to retain private counsel, either for pay or pro bono, to assist in the representation of any standing or select committee in any judicial proceeding initiated or intervened in pursuant to the authorities described in the resolution.

CHANGES IN EXISTING HOUSE RULES MADE BY THE RESOLUTION, AS
REPORTED

In compliance with clause 3(g) of rule XIII of the Rules of the House of Representatives, the Committee finds that this resolution does not propose to repeal or amend a standing rule of the House.

DISSENTING VIEWS

H. Res. 430 is the latest misstep in the Democratic Majority's journey to shadow impeach the President. Unfortunately, this measure does not adequately provide a pathway for the U.S. House of Representatives to fulfill its Article I responsibilities and conduct prudent and targeted oversight. As such, we cannot support it. The options before the Democratic Majority to acquire the information they seek are numerous, yet the tool they selected and enshrined in H. Res. 430 is unwieldy and ineffective at best, and at worst, places the credibility of the institution in court and in the hands of an untested legal theory.

We would be remiss if we did not express our disappointment that the Majority held no legislative hearings on the text and moved directly to a Full Committee Markup a mere four days after introduction, with only six Members of the Democratic Majority joining as cosponsors. Not to mention neglecting to have the very Chairman who authorized the underlying subpoenas referenced in the text testify before the Rules Committee. As we seek to understand the Majority's expedited consideration of H. Res. 430, we find the following statement from a member of the Democratic Caucus instructive:

*"Yes, we simply do not have 400 days to wait before making sure that we are protected in the 2020 election. We know that in 2016, the Russians interfered with our election so that they could help Donald Trump get elected. Donald Trump will stand for reelection again in a very short period of time, and we don't have 400 days to wait to determine whether or not we are in shape to withstand any additional attempts for the Russians to try to interfere to help Trump get reelected."*¹

Members of the Democratic Majority have previously articulated the key flaws we see in the entire process leading this Committee to consider H. Res. 430, and indeed, in the premise of the resolution itself. While these comments were written in defense of a previous attorney general, they perfectly apply to the situation before this Committee and ultimately the full House:

"As a Member of Congress, I treat assertions of executive privilege very seriously. I believe they should be used only sparingly. In this case, it seems clear the Administration was forced into a position by the committee's insistence on pushing forward with contempt. Despite the Attorney General's good-faith offer, Mr. Chairman, it did not have to be this way. We could have postponed today's vote and accepted the Attorney General's offer. Instead, by not honoring the

¹ May 8, 2019 House Judiciary Committee Business Meeting at 148.

*Constitution's charge to seek accommodations when possible, the prestige of this committee has been diminished. As a result, that should concern us all."*²

While the resolution contains a number of drafting flaws, we find three grave errors in the fundamental premise of the legislation that are deserving of this body's careful consideration and deliberation before further rushing to a vote of the full House. It should also be of interest to Members of this distinguished institution that during consideration of H. Res. 430, we attempted to reach across the aisle to offer solutions to some of the most basic, technical problems with the drafting of the legislation, including ensuring that registered lobbyists would not be paid by the House, and therefore the American taxpayer, under the authorities provided in H. Res. 430. This amendment, which was supported by our Democratic colleagues in a previous Congress, was rejected by every Democratic member of the Rules Committee—giving us significant pause for the future of this institution in the hands of this Democratic Majority.

The Resolution is Unprecedented in Speed and Sequencing

The U.S. House of Representatives has only sued for documents twice, and in both cases the individuals in question were first found in contempt of Congress at both the committee level and by the full House. In the case of Attorney General William P. Barr and Mr. Donald F. McGahn, the Democratic Majority has opted not to hold these individuals in contempt of Congress at this time despite taking action in the House Judiciary Committee. This strategy is unprecedented in the House. Never before has this institution moved to sue without exercising all of its options to get the information it desires, including first voting on criminal contempt. Not only is H. Res. 430 unprecedented in the sequencing of events, but also in the timeframe in which the actions compare to the two previous instances.

	First Request until Contempt in Committee	Subpoena until Contempt in Committee
William Barr	44 days	19 days
Eric Holder	464 days	255 days
Harriet Miers	138 days	42 days

The Resolution Increases Risk to the Institution

The path that H. Res. 430 forces the House upon puts this institution on weak legal footing in the eyes of the court. When the House sued for documents in the two previous instances noted above, the government officials were first held in contempt. In other words, the House had utilized all the tools in its toolbox. That is not the case here. These untested tactics risk the House losing in court, causing long-term damage to the institution and an

²Statement of Congressman Elijah Cummings. Oversight and Government Reform Committee, Report Recommending that the House of Representatives Find Eric H. Holder, Jr., Attorney General, U.S. Department of Justice, in Contempt of Congress for Refusal To Comply With A Subpoena Duly Issued By The Committee on Oversight and Government Reform, June 20, 2012. Available at: <https://republicans-oversight.house.gov/wp-content/uploads/2012/06/6-19-12-Fast-and-Furious-Contempt-Report.pdf>.

utter waste of taxpayer resources—both time and financial. The debate over the inclusion of 6(e) materials in the underlying subpoena related to Attorney General Barr is of particular relevance here. While House Judiciary Committee Chairman Jerrold Nadler has made numerous statements, including in a May 24, 2019 letter to the Department of Justice, that his Committee is not seeking any documents that are properly subject to Rule 6(e), the very subpoena he issued, and referenced in paragraph one of H. Res. 430, applies to 6(e) materials, making it impossible for Attorney General Barr to fully comply with the subpoena without breaking the law. As highlighted in the House Judiciary Committee’s dissenting views in House Report 116–105:

At the Committee business meeting to discuss the contempt citation, Chairman Nadler acknowledged a difference between the intent of the subpoena and the language in the actual subpoena itself. Amidst a discussion about grand jury (“6(e)”) material—which would require the Attorney General to break the law in order to produce to the Committee—the Chairman stated:

The reason that was in the subpoena was to increase our clout in court in getting the 6(e) material, hopefully with the Attorney General’s support, but it is in no way meant to force him to give that support.

This astonishing admission strikes at the heart of the matter: the Chairman is not interested in obtaining documents through the accommodations process but rather positioning himself for litigation.

Further, after acknowledging it was not the Chairman’s intent to include this grand jury material, he stated:

No, we are not going to issue a new subpoena. We have no intention and never had any intention of enforcing—of trying to force the Attorney General or anyone else to give us 6(e) material without going to court.

The Chairman also stated:

. . . it has never been our intention, as we have stated before, to ask the Attorney General to violate the law. We have always intended and we have made it very clear that we wanted him to come to court with us to ask for an exemption to Rule 6(e).

These statements indicate the Chairman’s goal all along was to go to court and not engage in the accommodations process. If the Chairman believed the material could not be obtained absent going to court, he could have carved out language to that effect in the subpoena or an accompanying cover letter. He did not do this. Instead, he expects the Attorney General to go to court seeking this material—something the Chairman has provided no precedent for—and moved to hold him in contempt in part because the Attorney General did not do this.³

To be clear, the Attorney General’s refusal to go to court along with Chairman Nadler is in no way a proper demand of the Chair,

³Dissenting views in H. Rept. 116–105—Resolution Recommending That The House Of Representatives Find William P. Barr, Attorney General, U.S. Department Of Justice, In Contempt Of Congress For Refusal To Comply With A Subpoena Duly Issued By The Committee On The Judiciary, Jun. 6, 2019, pp. 24–41. Available at: <https://www.congress.gov/116/crpt/hrpt105/CRPT-16hrpt105.pdf>.

nor should be considered a proper basis for this proposed action of the House.

During the April 3, 2019 House Judiciary Committee markup authorizing the subpoena referenced in (1)(A) of H. Res. 430, Congressman Ken Buck (R-CO) offered an amendment stating:

This Resolution shall not be construed as authorizing the Chairman to issue a subpoena for the production of information where such production would violate Rule 6(e) of the Federal Rules of Criminal Procedure.⁴

Meaning that the subpoena in question wouldn't cover 6(e) materials, ensuring that the Attorney General of the United States would not be forced to choose between complying with subpoena or complying with the law. Chairman Nadler and every Democratic Member of the Judiciary Committee voted against this amendment and it was rejected by a vote of 24–16.

On April 9, 2019, the Congressional Research Service released a “Legal Sidebar” on a DC District Court decision *McKeever v. Holder*:

On April 5, 2019, the three-judge panel in McKeever ruled that federal courts lack “inherent authority” to authorize the disclosure of grand jury matters in circumstances not covered by an explicit exception set out in Rule 6(e) of the Federal Rules of Criminal Procedure. It thus appears that, for the time being, the panel’s decision has closed off one potential avenue for Congress to obtain grand jury material in federal court in the District of Columbia (though the decision could always be reheard en banc or overturned by the Supreme Court).

That said, as the McKeever decision notes, Congress previously was successful in obtaining grand jury materials pursuant to the Rule 6(e) exception for disclosure “preliminarily to or in connection with a judicial proceeding” on the theory that an authorized impeachment inquiry is preliminary to such a proceeding. That avenue appears to remain available to Congress after McKeever.

Furthermore, Congress has in the past taken the position that it possesses independent constitutional authority to obtain grand jury materials regardless of the applicability of any Rule 6(e) exceptions—i.e., that the rule of grand jury secrecy simply does not apply to Congress when it is acting within the “sphere of legitimate legislative activity.” But while two courts have appeared to agree with that position, the Department of Justice (and some other courts) have contested it.⁵

The *McKeever* decision is instructive to the consideration of H. Res. 430 in a few areas:

⁴Markup of Resolution authorizing issuance of subpoena, H. Comm. on the Judiciary, 116th Cong., 1st Session, Apr. 3, 2019, Amendment—Buck #2, available at: <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=109260>.

⁵Foster, Michael, “Do Courts Have Inherent Authority to Release Secret Grand Jury Materials?”. CRS Legal Sidebar, April 9, 2019. Available at: <https://www.crs.gov/Reports/LSB10201?source=search&guid=e30d31d0ce6e40d6b61875dcf4867487&index=0>.

- As the court ruled that federal courts lack “inherent authority” to authorize the disclosure of grand jury matters in circumstances not covered by an explicit exception set out in Rule 6(e), the subpoena authorized by Chairman Nadler is inherently flawed and unenforceable.

- Pursuing civil action to enforce a subpoena covering material that federal courts cannot authorize virtually ensures the House will lose and inflict long-term damage on the institution through flawed and untested legal theories.

- The decision notes that Congress previously was successful in obtaining grand jury materials pursuant to the Rule 6(e) exception for disclosure “preliminarily to or in connection with a judicial proceeding” on the theory that an authorized impeachment inquiry is preliminary to such a proceeding. In the situation before us, clear distinctions are drawn between the previous legal success where the individuals in question were first held in contempt, and the current context in which the full House as not taken a single vote as it relates to contempt.

The Resolution is the Least Effective Means

Other than securing news headlines, it is largely unclear what Chairman Nadler and Chairman McGovern are trying to accomplish, as this resolution upends process, bipartisanship, and the foundation needed for this institution to have the best chance of success in court. While H. Res. 430 purports to replace the need for a vote of the Full House for the vote of the three Majority Members of the Bipartisan Legal Advisory Group, this structure only furthers our concern that taking away the voice of the Full House on an issue of the Constitutional separation of powers will lead to long term damage to the institution. The risk assumed by passage of this resolution leads us to believe that success in court and the preservation of this institution is unfortunately being neglected for other priorities of the Majority.

Leading us to again wonder, why are countless hours being wasted to consider this legislation now when arguably, the Democratic Majority could have done this months ago. We had hoped their neglect to do so was evidence of their understanding of the dangerous long-term implications of this approach, but circumstances show otherwise.

While the actions of the Democratic Majority have left us with little confidence that our concerns will be taken into account in their abandonment of governing for the sake of singular fixation on the results of the 2016 General Election, we hope they will at least consider the poignant words of one of their own chairmen:

“Why are we steamrolling ahead on a matter of such gravity? The answer is plain and simple: politics.”

“I want this institution to be strong, I also want the executive branch to be strong. That’s part of our duty, too. But when I see accommodation, when I see the Attorney General trying to work with us [. . .] We are very close to maintaining the integrity of both institutions. The Constitution calls for accommodation of each other and respect for each other.”

“It’s not my way or the highway, that’s not how we operate.”⁶

TOM COLE.
ROB WOODALL.
MICHAEL C. BURGESS.
DEBBIE LESKO.



⁶Statement of Congressman Elijah Cummings. Rules Committee Hearing on H. Res. 706 and H. Res. 711, 112th Cong., 2nd Session, Jun. 27, 2012 available at: <https://rules.house.gov/video/rules-committee-hearing-h-res-706-and-h-res-711>.