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

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

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

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

R E P O R T

together with

_____ VIEWS

[To accompany H. Res. 430]

[Including cost estimate of the Congressional Budget Office]

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, reports favorably thereon with an amendment and recommends that the resolution as amended be agreed to.

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.

TABLE OF CONTENTS

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 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]

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[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").

[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-65e0-11e9-8985-4cf30147bdca_story.html?utm_term=.c08cc78e2536)

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 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]

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[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).

[6] 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 (April 8, 2019), *available at*

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 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

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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 Pat Cipollone, Counsel to the President (May 13, 2019), *available at* https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-05-13.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.

[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).

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]

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 mountaintop 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]

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[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, 201).

[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).

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]

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

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[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).

[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).

assessment of Pigment Violet 29.[27] That request was renewed on March 21.[28] Although the agency 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 Committee already had and not answering any of the Committee's requests.

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[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).

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

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

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

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 1[32] 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, 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

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[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).

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 billion 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

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[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.

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] 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 16 [42] 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

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[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).

[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-seek-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).

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 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

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[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%2C%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.

[46] Letter 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.

response to request letters sent on February 21[47] 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 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

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[47] Letter 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

[48] Letter 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.

[49] Letter from Eliot L. Engel, Chairman, H. Comm. on Foreign Affiars; Adam Smith, Chairman, H. Comm. on Armed Services; and Adam Schiff, Chairman, H. Perm. Select Comm. on Intelligence, to Mike Pomeop, 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.

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 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

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[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.

[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.

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 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]

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[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.

[57] *See supra* note 1.

[58] *Statement by Former Federal Prosecutors* (May 6, 2019) (online at https://medium.com/@dojalumni/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

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 materials," 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

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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.

[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 satisf[y] 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."

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 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

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[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.

[66] Letter 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).

[67] Letter 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]s an 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 satisf[y] 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."

[68] On 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).

time, the Judiciary Committee has continued its efforts to reach an accommodation with Mr. McGahn.[69]

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 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

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[69] In 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."

[70] *See supra* note 1.

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

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[e]ld 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]

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

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[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.

[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").

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 documents 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

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[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)).

[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.

purpose"[83]; assertions of executive privilege[84] and absolute immunity without a valid basis[85]; 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 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.

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[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).

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

Date: June 10, 2019.
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

Date: June 10, 2019.
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

Date: June 10, 2019.
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

Date: June 10, 2019.
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

Date: June 10, 2019.
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 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. 103

Date: June 10, 2019
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 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. 104

Date: June 10, 2019.
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 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. 105

Date: June 10, 2019.
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

Date: June 10, 2019.
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 enforcement 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

House Resolution 430, Authorizing the Committee on the Judiciary to initiate or intervene in judicial proceedings to enforce certain subpoenas and for other purposes.

June 10, 2019

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 unwieldly 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*

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

General's offer. Instead, by not honoring the 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

[2]Statement 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

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 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]

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[3] Dissenting 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

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, 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*

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-116hrpt105.pdf

[4] Markup 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.

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:

- 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:

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[5] Foster, 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

"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]*"*

[6] Statement 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.

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