

116TH CONGRESS
1ST SESSION

H. CON. RES. 24

Expressing the sense of Congress that the report of Special Counsel Mueller should be made available to the public and to Congress.

IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 2019

Mr. NADLER (for himself, Ms. WATERS, Mr. SCHIFF, Mr. CUMMINGS, Mr. ENGEL, and Mr. NEAL) submitted the following concurrent resolution; which was referred to the Committee on the Judiciary

CONCURRENT RESOLUTION

Expressing the sense of Congress that the report of Special Counsel Mueller should be made available to the public and to Congress.

Whereas, on January 6, 2017, the Office of the Director of National Intelligence released a report concluding that “Russian President Vladimir Putin ordered an influence campaign in 2016 aimed at the US presidential election”, that the goal of this campaign was “to undermine public faith in the US democratic process”, and that “Putin and the Russian Government developed a clear preference for President-elect Trump”;

Whereas, on March 20, 2017, the Director of the Federal Bureau of Investigation (FBI) testified that he was authorized by the Department of Justice to confirm that

the FBI is investigating whether “there was any coordination” between individuals associated with the Trump presidential campaign and the Russian Government;

Whereas part 600 of title 28, Code of Federal Regulations, as in effect on March 7, 2019 (in this resolution referred to as “Special Counsel Regulations”), provides for the appointment of a Special Counsel when the Attorney General or Acting Attorney General “determines that criminal investigation of a person or matter is warranted and—(a) That investigation . . . by a United States Attorney’s Office or litigating Division of the Department of Justice would present a conflict of interest for the Department or other extraordinary circumstances; and (b) That under the circumstances, it would be in the public interest to appoint an outside Special Counsel to assume responsibility for the matter”;

Whereas the Special Counsel Regulations call for any individual named as Special Counsel to be a “lawyer with a reputation for integrity and impartial decision making and with appropriate experience to ensure that both the investigation will be conducted ably, expeditiously and thoroughly, and that investigative and prosecutorial decisions will be supported by an informed understanding of the criminal law and Department of Justice policies”;

Whereas, on May 17, 2017, the Acting Attorney General appointed former FBI Director Robert S. Mueller III to serve as Special Counsel “to ensure a full and thorough investigation of the Russian government’s efforts to interfere in the 2016 presidential election”, including an examination of “any links and/or coordination between the Russian government and individuals associated with the campaign of President Donald Trump”, “any matters

that arose or may arise directly from the investigation”, and “any other matters within the scope of 28 C.F.R. 600.4(a)”;

Whereas the Acting Attorney General explained that he had appointed Special Counsel Mueller because he “determined that it is in the public interest . . . to . . . appoint a Special Counsel to assume responsibility for this matter . . . based upon the unique circumstances, the public interest requires [him] to place this investigation under the authority of a person who exercises a degree of independence from the normal chain of command . . . [and that] a Special Counsel is necessary in order for the American people to have full confidence in the outcome. Our nation is grounded on the rule of law, and the public must be assured that government officials administer the law fairly”;

Whereas Special Counsel Mueller has previously served in the Department of Justice as a prosecutor, United States Attorney, and Director of the FBI under both Republican and Democratic administrations, and his selection as the Special Counsel elicited bipartisan praise recognizing his reputation for competence, fairness, and nonpartisanship;

Whereas the Special Counsel’s investigation has thus far resulted in the public indictment of 34 individuals and 3 companies, 7 guilty pleas, and 1 conviction following a jury trial;

Whereas the Special Counsel Regulations provide that “[a]t the conclusion of the Special Counsel’s work, he or she shall provide the Attorney General with a confidential report explaining the prosecution or declination decisions reached by the Special Counsel”;

Whereas, on January 15, 2019, at his confirmation hearing before the Senate Committee on the Judiciary, Attorney General William Barr testified “I . . . believe it is very important that the public and Congress be informed of the results of the special counsel’s work. For that reason, my goal will be to provide as much transparency as I can consistent with the law”;

Whereas, on February 22, 2019, the chairs of six committees of the House of Representatives wrote to Attorney General Barr to inform him of their expectation that he will make Special Counsel Mueller’s report public “to the maximum extent permitted by law”;

Whereas transparency is consistent with the overall purpose and intent of the Special Counsel Regulations and the accompanying Department of Justice commentary, which notes the importance of “ensur[ing] congressional and public confidence in the integrity of the process”;

Whereas the need for transparency is most pronounced with regard to investigations that involve the President or individuals associated with his campaign as the President is responsible for the appointment of the senior leadership of the Department of Justice;

Whereas the Department of Justice’s United States Attorney’s Manual indicates that in public filings and proceedings, prosecutors “should remain sensitive to the privacy and reputation interests of uncharged third-parties”, that is, of persons who the Department considers may be, but are not yet criminally charged;

Whereas this general nonstatutory policy of sensitivity to the “interests of uncharged third-parties” should be inapplicable to a sitting President because the Department of

Justice’s Office of Legal Counsel has previously written that “a sitting President is constitutionally immune from indictment and criminal prosecution”;

Whereas the Department of Justice has on numerous recent occasions provided investigatory information to Congress and the public concerning investigations of high-level public officials in both pending and closed cases;

Whereas in the only other instance where a Special Counsel was appointed under the Special Counsel Regulations (in 1999, concerning the 1993 confrontation in Waco, Texas), both the interim and final reports provided by the Special Counsel were released to the public by the Attorney General; and

Whereas the allegations at the center of Special Counsel Mueller’s investigation strike at the core of our democracy, and there is an overwhelming public interest in releasing the Special Counsel’s report to ensure public confidence in both the process and the result of the investigation: Now, therefore, be it

1 *Resolved by the House of Representatives (the Senate*
2 *concurring), That Congress—*

3 (1) calls for the public release of any report
4 Special Counsel Mueller provides to the Attorney
5 General, except to the extent the public disclosure of
6 any portion thereof is expressly prohibited by law;
7 and

1 (2) calls for the full release to Congress of any
2 report Special Counsel Mueller provides to the Attor-
3 ney General.

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