

RESOLUTION OF INQUIRY REQUESTING THE PRESIDENT AND DIRECTING THE ATTORNEY GENERAL TO TRANSMIT, RESPECTIVELY, CERTAIN DOCUMENTS TO THE HOUSE OF REPRESENTATIVES RELATING TO THE REMOVAL OF FORMER FEDERAL BUREAU OF INVESTIGATION DIRECTOR JAMES COMEY

SEPTEMBER 28, 2017.—Referred to the House Calendar and ordered to be printed

Mr. GOODLATTE, from the Committee on the Judiciary,  
submitted the following

ADVERSE REPORT

together with

DISSENTING VIEWS

[To accompany H. Res. 488]

The Committee on the Judiciary, to whom was referred the resolution (H. Res. 488) of inquiry requesting the President and directing the Attorney General to transmit, respectively, certain documents to the House of Representatives relating to the removal of former Federal Bureau of Investigation Director James Comey, having considered the same, report unfavorably thereon with an amendment and recommend that the resolution as amended not be agreed to.

CONTENTS

	Page
The Amendment .....	2
Purpose and Summary .....	2
Background and Need for the Legislation .....	2
Hearings .....	4
Committee Consideration .....	4
Committee Votes .....	4
Committee Oversight Findings .....	7
New Budget Authority and Tax Expenditures .....	7
Committee Cost Estimate .....	7
Duplication of Federal Programs .....	7
Disclosure of Directed Rule Makings .....	7
Performance Goals and Objectives .....	7
Advisory on Earmarks .....	8
Section-by-Section Analysis .....	8
Dissenting Views .....	9

### **The Amendment**

The amendment is as follows:

Strike all after the resolving clause and insert the following:

That the President is requested, and Attorney General of the United States is directed, to transmit, respectively (in a manner appropriate to classified information, if the President or Attorney General determines appropriate), to the House of Representatives, not later than 14 days after the date of the adoption of this resolution, copies of any document, record, audio recording, memo, correspondence, or other communication in their possessions, or any portion of any such communication, that refers or relates to the following:

(1) The removal of James B. Comey from his position as the director of the Federal Bureau of Investigation.

(2) The participation of Attorney General Jefferson Sessions in the removal of Director Comey.

(3) The scope or application of Attorney General Sessions' recusal from "any existing or future investigations of any matters in any way related to the campaigns for President of the United States".

(4) The application of Attorney General Sessions' recusal to the removal of Director Comey.

(5) The scope or application of executive privilege as applied to the June 13, 2017, testimony of Attorney General Sessions before the Senate Select Committee on Intelligence.

(6) President Donald J. Trump's statement, communicated via Twitter on May 12, 2017, at 8:26 a.m.: "James Comey better hope that there are no 'tapes' of our conversations before he starts leaking to the press!".

(7) Any system used by the White House to secretly record conversations between President Trump and Director Comey.

(8) Any contemporaneous account of any meeting between President Trump and Director Comey.

(9) Any communication Donald Trump, Jr., Paul Manafort, or Jared Kushner may have had with the Department of Justice or the Federal Bureau of Investigation that relates to their June 9, 2016, meeting with Natalia Veselnitskaya, Rinat Akhmetshin, and Irakly Kaveladze.

(10) Any analysis regarding the violation of any criminal law with respect to that June 9, 2016, meeting, including any analysis of the Federal Election Campaign Act of 1971, the Computer Fraud and Abuse Act, or the Espionage Act of 1917 as it may pertain to a Federal campaign's attempt to obtain information that "would incriminate Hillary" from a foreign government.

(11) The disposition or review of any application for a security clearance submitted by White House advisor Jared Kushner or Attorney General Sessions.

### **Purpose and Summary**

House Resolution 488 is a non-binding resolution of inquiry that requests that the Trump Administration provide the House of Representatives with certain documents related to the removal of James B. Comey from his position as director of the Federal Bureau of Investigation.

### **Background and Need for the Legislation**

Resolutions of inquiry, if properly drafted, are given privileged parliamentary status in the House. This means that, under certain circumstances, a resolution of inquiry can be considered on the House floor even if the committee to which it was referred has not ordered the resolution reported and the majority party's leadership has not scheduled it for consideration. Clause 7 of rule XIII of the Rules of the House of Representatives requires the committee to which the resolution is referred to act on the resolution within 14 legislative days, or a motion to discharge the committee from consideration is considered privileged on the floor of the House. In cal-

culating the days available for committee consideration, the day of introduction and the day of discharge are not counted.<sup>1</sup>

Under the Rules and precedents of the House, a resolution of inquiry is a means by which the House may request information from the President or the head of one of the executive departments. According to *Deschler's Precedents*, it is a “simple resolution making a direct request or demand of the President or the head of an executive department to furnish the House of Representatives with specific factual information in the possession of the executive branch.”<sup>2</sup> Such resolutions must ask for facts, documents, or specific information; they may not be used to request an opinion or require an investigation.<sup>3</sup> Resolutions of inquiry are not akin to subpoenas, they have no legal force, and thus compliance by the Executive Branch with the House’s request for information is purely voluntary.

According to a study conducted by the Congressional Research Service (CRS), between 1947 and 2011, 290 resolutions of inquiry were introduced in the House.<sup>4</sup> Within this period, CRS found that “two periods in particular, 1971–1975 and 2003–2006, saw the highest levels of activity on resolutions of inquiry” and that the “Committees on Armed Services, Foreign Affairs, and the Judiciary have received the largest share of references.”<sup>5</sup> CRS further found that “in recent Congresses, such resolutions have overwhelmingly become a tool of the minority party in the House.”<sup>6</sup>

A Committee has a number of choices after a resolution of inquiry is referred to it. It may vote on the resolution up or down as is or it may amend it, and it may report the resolution favorably, unfavorably, or with no recommendation.

H. Res. 488 is the fifth resolution of inquiry that the Judiciary Committee has been forced to consider this Congress. This is the same number of resolutions of inquiry that all other House committees combined have considered. As members of the majority have pointed out in debate regarding these resolutions, resolutions of inquiry, even if acted upon by the House, have no greater legal force than sending the Executive Branch a letter. Except that sending a letter does not monopolize the Committee’s time. Time that the Committee could better spend on working to reform our nation’s immigration system; enacting criminal justice reform; reauthorizing the Department of Justice; advancing legislation to create jobs and restore economic prosperity for families and businesses across the nation; securing constitutional freedoms; or working on legislation that helps protect our citizens from the threats posed by crime and terrorism.

H. Res. 488 is particularly emblematic of the time-consuming nature of these resolutions. At the Committee’s July 26, 2017 business meeting, the Committee debated a resolution of inquiry (H. Res. 446) that was nearly identical to H. Res. 488. Debate on that

<sup>1</sup>Wm. Holmes Brown, et al., *House Practice: A Guide to the Rules, Precedents, and Procedures of the House* ch. 49, § 6, p. 834 (2011).

<sup>2</sup>7 *Deschler's Precedents of the United States House of Representatives*, H. Doc. No. 94–661, 94th Cong., 2d Sess., ch. 24, § 8.

<sup>3</sup>A resolution that seeks more than factual information does not enjoy privileged status. Brown, *supra* note 1, at 833–34.

<sup>4</sup>Christopher M. Davis, Congressional Research Service, *Resolutions of Inquiry: An Analysis of Their Use in the House, 1947–2011* at i (2012).

<sup>5</sup>*Id.*

<sup>6</sup>*Id.*

resolution took almost two-and-a-half hours. H. Res. 488 required the Committee to debate essentially the same resolution all over again. The Committee cannot continue to debate these repetitive, non-binding resolutions—resolutions that seek information that is already subject to investigation by at least five other entities.

This Committee is conducting oversight as appropriate into Special Counsel Mueller’s investigation into Russian interference in the 2016 elections and potential ties to the Trump Campaign. In fact Chairman Goodlatte and Ranking Member Conyers recently met with Mr. Mueller. However, the investigation must be allowed to proceed without outside political interference. The resolution injects the very political influence the Committee seeks to avoid.

### Hearings

The Committee on the Judiciary held no hearings on H. Res. 488.

### Committee Consideration

On, September 7, 2017, the Committee met in open session and ordered H. Res. 488 unfavorably reported with an amendment, by a roll call vote of 23–8, a quorum being present.

### Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following roll call votes occurred during the Committee’s consideration of H. Res. 488.

1. Motion to order the previous question. Approved 18 to 1.

#### ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman .....	X		
Mr. Sensenbrenner, Jr. (WI) .....	X		
Mr. Smith (TX) .....	X		
Mr. Chabot (OH) .....	X		
Mr. Issa (CA) .....			
Mr. King (IA) .....			
Mr. Franks (AZ) .....	X		
Mr. Gohmert (TX) .....	X		
Mr. Jordan (OH) .....	X		
Mr. Poe (TX) .....	X		
Mr. Marino (PA) .....	X		
Mr. Gowdy (SC) .....	X		
Mr. Labrador (ID) .....	X		
Mr. Farenthold (TX) .....	X		
Mr. Collins (GA) .....	X		
Mr. DeSantis (FL) .....			
Mr. Buck (CO) .....			
Mr. Ratcliffe (TX) .....			
Ms. Roby (AL) .....	X		
Mr. Gaetz (FL) .....	X		
Mr. Johnson (LA) .....	X		
Mr. Biggs (AZ) .....			
Mr. Rutherford (FL) .....	X		
Ms. Handel (GA) .....	X		

**ROLLCALL NO. 1**—Continued

	<b>Ayes</b>	<b>Nays</b>	<b>Present</b>
Mr. Conyers, Jr. (MI), Ranking Member .....			
Mr. Nadler (NY) .....			
Ms. Lofgren (CA) .....			
Ms. Jackson Lee (TX) .....			
Mr. Cohen (TN) .....			
Mr. Johnson (GA) .....			
Mr. Deutch (FL) .....			
Mr. Gutierrez (IL) .....			
Ms. Bass (CA) .....			
Mr. Richmond (LA) .....			
Mr. Jeffries (NY) .....			
Mr. Cicilline (RI) .....			
Mr. Swalwell (CA) .....			
Mr. Lieu (CA) .....			
Mr. Raskin (MD) .....			
Ms. Jayapal (WA) .....		X	
Mr. Schneider (IL) .....			
<b>Total</b> .....	<b>18</b>	<b>1</b>	

2. A substitute amendment offered by Mr. Goodlatte to make technical corrections. Approved 17 to 1.

**ROLLCALL NO. 2**

	<b>Ayes</b>	<b>Nays</b>	<b>Present</b>
Mr. Goodlatte (VA), Chairman .....	X		
Mr. Sensenbrenner, Jr. (WI) .....	X		
Mr. Smith (TX) .....	X		
Mr. Chabot (OH) .....	X		
Mr. Issa (CA) .....			
Mr. King (IA) .....			
Mr. Franks (AZ) .....	X		
Mr. Gohmert (TX) .....	X		
Mr. Jordan (OH) .....			
Mr. Poe (TX) .....	X		
Mr. Marino (PA) .....	X		
Mr. Gowdy (SC) .....	X		
Mr. Labrador (ID) .....	X		
Mr. Farenthold (TX) .....	X		
Mr. Collins (GA) .....	X		
Mr. DeSantis (FL) .....			
Mr. Buck (CO) .....			
Mr. Ratcliffe (TX) .....			
Ms. Roby (AL) .....	X		
Mr. Gaetz (FL) .....	X		
Mr. Johnson (LA) .....	X		
Mr. Biggs (AZ) .....			
Mr. Rutherford (FL) .....	X		
Ms. Handel (GA) .....	X		
Mr. Conyers, Jr. (MI), Ranking Member .....			
Mr. Nadler (NY) .....			
Ms. Lofgren (CA) .....			
Ms. Jackson Lee (TX) .....			
Mr. Cohen (TN) .....			
Mr. Johnson (GA) .....			

**ROLLCALL NO. 2**—Continued

	<b>Ayes</b>	<b>Nays</b>	<b>Present</b>
Mr. Deutch (FL) .....			
Mr. Gutierrez (IL) .....			
Ms. Bass (CA) .....			
Mr. Richmond (LA) .....			
Mr. Jeffries (NY) .....			
Mr. Cicilline (RI) .....			
Mr. Swalwell (CA) .....			
Mr. Lieu (CA) .....			
Mr. Raskin (MD) .....			
Ms. Jayapal (WA) .....		X	
Mr. Schneider (IL) .....			
<b>Total</b> .....	<b>17</b>	<b>1</b>	

3. Motion to report H. Res. 488 unfavorably to the House. Approved 23 to 8.

**ROLLCALL NO. 3**

	<b>Ayes</b>	<b>Nays</b>	<b>Present</b>
Mr. Goodlatte (VA), Chairman .....	X		
Mr. Sensenbrenner, Jr. (WI) .....	X		
Mr. Smith (TX) .....	X		
Mr. Chabot (OH) .....	X		
Mr. Issa (CA) .....	X		
Mr. King (IA) .....	X		
Mr. Franks (AZ) .....	X		
Mr. Gohmert (TX) .....	X		
Mr. Jordan (OH) .....	X		
Mr. Poe (TX) .....	X		
Mr. Marino (PA) .....	X		
Mr. Gowdy (SC) .....	X		
Mr. Labrador (ID) .....	X		
Mr. Farenthold (TX) .....	X		
Mr. Collins (GA) .....	X		
Mr. DeSantis (FL) .....			
Mr. Buck (CO) .....	X		
Mr. Ratcliffe (TX) .....	X		
Ms. Roby (AL) .....	X		
Mr. Gaetz (FL) .....	X		
Mr. Johnson (LA) .....	X		
Mr. Biggs (AZ) .....	X		
Mr. Rutherford (FL) .....	X		
Ms. Handel (GA) .....	X		
Mr. Conyers, Jr. (MI), Ranking Member .....		X	
Mr. Nadler (NY) .....		X	
Ms. Lofgren (CA) .....			
Ms. Jackson Lee (TX) .....		X	
Mr. Cohen (TN) .....		X	
Mr. Johnson (GA) .....			
Mr. Deutch (FL) .....			
Mr. Gutierrez (IL) .....			
Ms. Bass (CA) .....			
Mr. Richmond (LA) .....			
Mr. Jeffries (NY) .....			
Mr. Cicilline (RI) .....		X	

**ROLLCALL NO. 3—Continued**

	<b>Ayes</b>	<b>Nays</b>	<b>Present</b>
Mr. Swalwell (CA) .....			
Mr. Lieu (CA) .....			
Mr. Raskin (MD) .....		X	
Ms. Jayapal (WA) .....		X	
Mr. Schneider (IL) .....		X	
Total .....	23	8	

**Committee Oversight Findings**

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

**New Budget Authority and Tax Expenditures**

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

**Committee Cost Estimate**

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the Committee estimates that implementing this non-binding resolution would not result in any significant costs. The Congressional Budget Office did not provide a cost estimate for the resolution.

**Duplication of Federal Programs**

No provision of H. Res. 488 establishes or reauthorizes a program of the Federal government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

**Disclosure of Directed Rule Makings**

The Committee finds that H. Res. 488 contains no directed rule making within the meaning of 5 U.S.C. § 551.

**Performance Goals and Objectives**

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H. Res. 488 requests certain documents from the Trump Administration related to the dismissal of former Federal Bureau of Investigation Director James Comey.

**Advisory on Earmarks**

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H. Res. 488 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI.

**Section-by-Section Analysis**

The following discussion describes the resolution as reported by the Committee.

H. Res. 488, a non-binding resolution of inquiry, requests that the President and the Attorney General of the United States transmit certain documents and communications to the House of Representatives related to the removal of James B. Comey from his position as the director of the Federal Bureau of Investigation.



### **Dissenting Views**

H. Res. 488, introduced by Representatives David Cicilline (D–RI) and Pramila Jayapal (D–WA), directs the Trump Administration to produce information related to certain key events at the Department of Justice—among them, the removal of James Comey from his position as director of the Federal Bureau of Investigation (FBI), the seemingly arbitrary application of the Attorney General’s recusal from matters related to the presidential campaigns, and President Donald Trump’s claim that he maintains secret “tapes” of his private conversations with Mr. Comey.<sup>1</sup> This resolution represents our second attempt to debate this subject matter and proceed to an up-or-down vote. Once again, the Majority has shown that it would rather change the subject—or cut off debate entirely—than conduct even modest oversight of the Trump Administration.

Any one of the issues raised by H. Res. 488 would ordinarily command the attention of the Committee. The information we seek is critical to our ability to conduct oversight of the executive branch, and to push back against the President’s direct attacks on the leadership and integrity of the Department of Justice. The Majority refuses to do this work. At markup, rather than discuss the resolution on the merits, Chairman Bob Goodlatte simply “called the previous question” and cut off debate just as consideration of H. Res. 488 had begun.

This move breaks with the Committee’s long commitment to the rights of the Minority, no matter which party is in charge. The Majority is entitled to disagree with us about the importance of conducting oversight—but we cannot tolerate a situation where they dispose of a resolution of inquiry without first providing us with the courtesy of open debate. We object to the procedures employed during the consideration of this important measure and dissent from the Majority’s decision to report it unfavorably.

I. H. RES. 488 IS NECESSARY BECAUSE THE MAJORITY UNDERMINED AN EARLIER RESOLUTION BY TURNING IT INTO A LIST OF HILLARY CLINTON CONSPIRACY THEORIES

Representatives Jayapal and Cicilline introduced a substantively similar resolution, H. Res. 446, on July 14, 2017. Like H. Res. 488, H. Res. 446 sought information about the firing of James Comey, the scope and application of the Attorney General’s recusal, and the President’s alleged recordings of his private conversations with Mr. Comey.

Rather than debate H. Res. 446 at the Committee markup in July, however, the Majority adopted an amendment offered by Representative Matthew Gaetz (R–FL) that struck the contents of the

---

<sup>1</sup>@realDonaldTrump (President Donald J. Trump), Twitter, May 12, 2017, 8:26 AM.

resolution and replaced it with a long list of unfounded grievances aimed at Hillary Clinton.<sup>2</sup> We learned later that Representative Gaetz's office had solicited suggestions for the amendment from r/The\_Donald, an online forum hosted by Reddit whose members promote pro-Trump conspiracy theories and often self-identify as racist, anti-Semitic, anti-Muslim, misogynistic, pro-Nazi, and anti-immigrant.<sup>3</sup> The Majority embraced this amendment unanimously, and passed it on a party line vote.<sup>4</sup>

In a letter to Chairman Goodlatte (R-VA) after the markup of H. Res. 446, Ranking Member John Conyers, Jr. (D-MI), together with Representatives Cicilline, and Jayapal expressed their frustration with this heavy-handed tactic:

As the Chairman of the House Judiciary Committee, you have no need to distort our legislation in order to accomplish your oversight needs. You may demand whatever information you wish from the Trump Administration, supported by the threat of subpoena . . . . Indeed, we have urged you for months to conduct even basic oversight of the Department of Justice. We repeat our request that you call hearings with the leadership of the Department as soon as possible.

If even that power is insufficient for your needs, then members of the Majority are free to offer resolutions of inquiry of their own.<sup>5</sup>

The Majority did not respond to the letter and still has not scheduled a single substantive oversight hearing. With no other recourse, Representatives Cicilline and Jayapal introduced H. Res. 488 to demand an open debate on the substance of their resolution, rather than on a trite inventory of Clinton-related conspiracy theories.

H. Res. 488 covers much of the same subject matter as its predecessor. The resolution asks for information about the firing of James Comey, the Attorney General's recusal, and the President's conversations with the FBI director prior to his removal. H. Res. 488 also incorporates two amendments our Members had planned to offer at the markup of the earlier resolution. Accordingly, H. Res. 488 now asks for information about a June 2016 meeting at Trump Tower between senior campaign officials and representatives of the Russian government, as well as for information about security clearance applications submitted by White House advisor Jared Kushner and Attorney General Jeff Sessions. Obtaining this information would represent a modest first step in fulfilling our Committee's oversight responsibilities.

<sup>2</sup>See H.R. Rep. No. 115-300, Sept. 8, 2017. "Rather than debate the resolution on the merits, however, the Majority has shown us where their priorities lie: they would rather chase the ghost of Hillary Clinton's emails than face the fact of widespread dysfunction at the White House and the Department of Justice." *Id.* (dissenting views).

<sup>3</sup>Ashley Feinberg, *A GOP staffer crowdsources an anti-Clinton resolution from Reddit*, WIRED, July 28, 2017. See also The Data Team, *The origin of the specious*, THE ECONOMIST, July 4, 2017; Caitlin Dewey, *The people running this Trump fan club also promote eugenics and call Muslims "animals"*, WASH. POST, July 20, 2016.

<sup>4</sup>H.R. Rep. No. 115-300, Sept. 8, 2017.

<sup>5</sup>Letter from Ranking Member John Conyers, Jr., et al., to Chairman Bob Goodlatte, H. Comm. on the Judiciary, July 28, 2017.

## II. THE MAJORITY CUT OFF DEBATE TO AVOID ITS OVERSIGHT RESPONSIBILITIES

The markup of H. Res. 488 was brief. Chairman Goodlatte complained that the resolution was an example of “partisan mudslinging” and a waste of time.<sup>6</sup> Ranking Member Conyers responded to that criticism, stating that “until the Administration answers our questions, and until the Majority calls them here to do so, my colleagues and I will do everything in our power to hold both the Administration and the Majority accountable.”<sup>7</sup> Representative Gaetz pitched an amendment that he would not be permitted to offer—arguing, incredulously, that “[t]he only evidence of collusion with Russia is the evidence that Hillary Clinton was working with Russian operatives.”<sup>8</sup> He yielded time to Representative Jim Jordan (R-OH), who wondered aloud: “[w]hy is not the House Judiciary Committee doing an investigation” into Hillary Clinton, Cheryl Mills, and former Attorney General Loretta Lynch?<sup>9</sup>

Representative Cicilline, who was the last Member permitted to speak on the resolution, then got to the heart of the matter:

When Congresswoman Jayapal and I originally filed this resolution of inquiry, we were seeking answers to urgent questions about the conduct of members of the Trump Administration. These questions remain and they include . . . the full extent of the ties between Donald Trump’s inner circle and the Kremlin; whether James Comey was fired to hide the truth about Donald Trump’s ties to Russia or collusion between the Trump campaign and Russian officials; and if Jeff Sessions violated his recusal when he participated in the firing of James Comey.

[W]e were denied not only the answers to our questions, we were denied the right to even ask those questions. Instead of allowing us to have a debate and offer amendments, the Majority used a procedural maneuver to erase our underlying resolution and turn [it] into a vehicle to conduct yet another pointless, baseless investigation of Hillary Clinton . . .

Why we would abdicate our constitutional oversight role is beyond me.<sup>10</sup>

Chairman Goodlatte then proceeded to move the previous question, thereby halting any further discussion of H. Res. 488.<sup>11</sup>

For many years, our Committee has prided itself on being able to agree to fair process and full debate, even when we disagree on the substance of matters before us. By cutting off debate on H. Res.

<sup>6</sup>Unofficial Tr. of Markup of H.R. 3229; H.R. 620; H. Res. 488, before the H. Comm. on the Judiciary, 115th Cong. (Sept. 7, 2017) (statement of Chairman Bob Goodlatte) [hereinafter Markup Tr.].

<sup>7</sup>*Id.* (statement of Ranking Member John Conyers, Jr.).

<sup>8</sup>*Id.* (statement of Rep. Matthew Gaetz).

<sup>9</sup>*Id.* (statement of Rep. Jim Jordan).

<sup>10</sup>*Id.* (statement of Rep. David Cicilline).

<sup>11</sup>“The motion to order the previous question proposes to stop the debate and block amendments . . . . The committee immediately votes on the motion and, if it is agreed to by majority vote, the committee proceeds to vote on the amendment. No further debate on the amendment is in order, nor can members offer any amendments to it.” *The Committee Markup Process in the House of Representatives*, CONG. RESEARCH SERVICE, Dec. 2, 2016 (RL30244).

488, and by diverting the core purpose of H. Res. 446 in an earlier markup, the Majority has threatened this longstanding and mutually honored understanding.

The maneuver itself is largely foreign to our Committee. Prior chairmen of this Committee have rarely, if ever, called the previous question. During his tenure as chairman, Ranking Member Conyers never suspended debate in this manner. Some chairmen have used the motion as a device to expedite Committee business, with the unanimous consent of the Members.<sup>12</sup> Chairman Henry Hyde (R-IL) once called the previous question during the impeachment of President Bill Clinton, but only after days of related hearings and hours of fulsome debate.<sup>13</sup> There is no modern precedent for Chairman Goodlatte's decision to end consideration of legislation just as debate had begun.

### III. THE MAJORITY FAILED TO JUSTIFY THEIR DECISION TO CUT OFF DEBATE

At markup, the Majority raised several arguments in an attempt to justify the decision to cut off debate. Each of these claims is inaccurate, unpersuasive, or both.

The Majority argued that we did not need to debate H. Res. 488 because "there is a special counsel in place examining the issue this resolution seeks to shed light on."<sup>14</sup> Although some aspects of the resolution—the President's decision to fire James Comey, for example—may be under examination by Special Counsel Robert Mueller, nothing about that investigation prevents the Committee from conducting its own oversight. Further, there is no indication that the Special Counsel is reviewing whether Attorney General Sessions has complied with the terms of his own recusal or whether certain questionable security clearances should be revoked. These matters are central to the information we had hoped to obtain through H. Res. 488.

The Majority asserted that H. Res. 488 "is simply an exercise in partisan mudslinging."<sup>15</sup> This is also inaccurate. This resolution of inquiry, and its predecessor, represent an attempt to obtain information about well-substantiated allegations of misconduct in the Trump Administration.

The Majority claimed that the Committee "does not have the time" to consider H. Res. 488, in part because it "barely differs from Ms. Jayapal's resolution we considered in July, and because debate on H. Res. 446 "took almost two-and-a-half hours of the Committee's time."<sup>16</sup> In fact, out of the two hours and 15 minutes that the Committee debated H. Res. 446, a full one hour and 50 minutes was dedicated to the Gaetz Amendment—which the Majority embraced unanimously. Indeed, had the Committee considered H. Res. 446 in the ordinary course—allowing for a full debate on the subject matter of that resolution, instead of demeaning the Committee with a call for yet another investigation into "Hillary

<sup>12</sup> See, e.g., *Markup of H.R. 807* before the H. Comm. on the Judiciary, 107th Cong., June 20, 2001; *Markup of H. Res. 437* before the H. Comm. on the Judiciary, 107th Cong., July 17, 2002.

<sup>13</sup> See *Markup of H. Res. 611* before the H. Comm. on the Judiciary, 105th Cong., Nov. 19, 1998.

<sup>14</sup> Markup Tr., *supra* note 5 (statement of Chairman Bob Goodlatte).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

Clinton, the Clinton Foundation, and . . . the obvious crimes committed therein,”<sup>17</sup>—it seems unlikely that Representatives Cicilline and Jayapal would have seen a need to introduce H. Res. 488.

Finally, the Majority complained that it should not have to debate H. Res. 488 because our Committee has considered “the same number of resolutions of inquiry that all other House committees have had to consider.”<sup>18</sup> We cannot change the fact that the Department of Justice and the FBI play central roles in the allegations of abuse of power and obstruction of justice surrounding the Trump Administration—or that oversight of these agencies falls squarely within our jurisdiction. The Committee must eventually play a lead role in Congress’s response to this alleged misconduct. To date, however, the Majority has made no meaningful effort to engage with the Department of Justice or the FBI.

We are not alone in our frustration at the Majority’s unwillingness to fulfill our oversight responsibilities. At the markup, Representative Jordan made clear that he agreed with Ranking Member Conyers on the question of prioritizing oversight:

We should conduct our own investigation, as the Ranking Member just said, which raises one more important “why” for the House Judiciary Committee. Why will not this committee look into this?

[T]he most important question is the one we need to ask ourselves. Why is not the House Judiciary Committee doing an investigation?<sup>19</sup>

In this same spirit, we have attempted to conduct oversight where the Majority will not. We have written to the Trump Administration on more than twenty occasions. We have not received a single meaningful response. In fact, the Administration has gone so far as to indicate that it will not respond at all to letters sent by Democratic Members (or rank-and-file Republicans).<sup>20</sup>

We have also written collectively to Chairman Goodlatte on seven occasions—and Ranking Member Conyers has written separately an additional four times—making eleven attempts to secure oversight hearings with the Attorney General, the Deputy Attorney General, the Director and former Director of the FBI, and the Secretary or Acting Secretary of Homeland Security. We have not received a response to these letters either. To date, the Majority has not scheduled a single substantive oversight hearing since President Trump took office.

In the face of this failure to act, resolutions of inquiry like H. Res. 488 often represent our only available recourse to conduct oversight. We will not be deterred from carrying out our constitutional responsibilities by the Majority’s reckless tactics. We will do our work even if threatened with shortened debate and spurious conspiracy theories. Indeed, until the Committee finally begins its oversight work in earnest, we have little choice.

<sup>17</sup>*Id.* (statement of Rep. Matthew Gaetz).

<sup>18</sup>*Id.* (statement of Chairman Bob Goodlatte).

<sup>19</sup>*Id.* (statement of Rep. Jim Jordan).

<sup>20</sup>Burgess Everett and Josh Dawsey, *White House orders agencies to ignore Democratic oversight requests*, POLITICO, June 2, 2017. See also Letter to President Donald J. Trump from Chairman Charles E. Grassley, S. Comm. on the Judiciary, June 7, 2017.

## CONCLUSION

On September 15, 2017, we again wrote to Chairman Goodlatte to object to his handling of the markup of H. Res. 488. His decision to call the previous question “was not only premature and ill-considered, but also disrespectful to the democratic process and to the Minority, in particular.”<sup>21</sup> We have offered to work with the Majority to resolve our concerns. We have received no response to this letter either.

The Committee has a duty to ask questions of the Trump Administration and to protect the institutions that have been trusted to our oversight. H. Res. 488 would have helped us to begin asking those questions. Rather than discuss these matters further, the Majority cut off debate on the resolution. Its reasons for doing so are wholly unpersuasive.

Because the Majority continues to fall short of the Committee’s responsibility to conduct oversight of the executive branch, and because the Majority has broken with longstanding Committee practice in order to stifle debate, we dissent.

MR. CONYERS, JR.  
 MR. NADLER.  
 MS. LOFGREN.  
 MS. JACKSON LEE.  
 MR. COHEN.  
 MR. JOHNSON, JR.  
 MR. DEUTCH.  
 MR. GUTIÉRREZ.  
 MS. BASS.  
 MR. RICHMOND.  
 MR. JEFFRIES.  
 MR. CICILLINE.  
 MR. SWALWELL.  
 MR. LIEU.  
 MR. RASKIN.  
 MS. JAYAPAL.

○

---

<sup>21</sup>Letter from Ranking Member John Conyers, Jr., et al., to Chairman Bob Goodlatte, H. Comm. on the Judiciary, Sept. 15, 2017.