

RESOLUTION OF INQUIRY DIRECTING THE ATTORNEY GENERAL TO PROVIDE CERTAIN DOCUMENTS IN THE ATTORNEY GENERAL'S POSSESSION TO THE HOUSE OF REPRESENTATIVES RELATING TO THE ONGOING CONGRESSIONAL INVESTIGATION RELATED TO CERTAIN PROSECUTORIAL AND INVESTIGATORY DECISIONS MADE BY THE DEPARTMENT OF JUSTICE AND FEDERAL BUREAU OF INVESTIGATION SURROUNDING THE 2016 ELECTION

JULY 10, 2018.—Referred to the House Calendar and ordered to be printed

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

R E P O R T

together with

DISSENTING VIEWS

[To accompany H. Res. 938]

The Committee on the Judiciary, to whom was referred the resolution (H. Res. 938) of inquiry directing the Attorney General to provide certain documents in the Attorney General's possession to the House of Representatives relating to the ongoing congressional investigation related to certain prosecutorial and investigatory decisions made by the Department of Justice and Federal Bureau of Investigation surrounding the 2016 election, having considered the same, report thereon with an amendment and recommend that the resolution as amended be agreed to.

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### The Amendment

The amendment is as follows:

Strike all that follows after the resolving clause and insert the following:

- Whereas after the recusal of Attorney General Jeff Sessions on March 2, 2017, from any matter potentially relating to the 2016 campaign, Deputy Attorney General Rod Rosenstein has overseen the Department's response to the congressional investigations into the Department of Justice (DOJ) and Federal Bureau of Investigation (FBI);
- Whereas a second Special Counsel was first requested on July 27, 2017, by House Committee on Judiciary Chairman Bob Goodlatte and 19 Members of Congress;
- Whereas, on September 26, 2017, Chairman Goodlatte and 13 Members of Congress sent a letter repeating the call for a second Special Counsel;
- Whereas, on March 6, 2018, Chairman Goodlatte and House Committee on Oversight and Government Reform Chairman Trey Gowdy called for the appointment of a second Special Counsel to investigate these matters;
- Whereas, on May 22, 2018, Representative Lee Zeldin, along with 31 Members of Congress, introduced House Resolution 907 calling for a second Special Counsel;
- Whereas Majority Leader Kevin McCarthy and Majority Whip Steve Scalise have supported the appointment of a second Special Counsel;
- Whereas Mr. Rosenstein and the DOJ have repeatedly failed to produce documents requested by the Committee on the Judiciary and the Committee on Oversight and Government Reform, obstructing Congress' oversight duty;
- Whereas, on October 24, 2017, the Committee on Judiciary and the Committee on Oversight and Government Reform opened a joint investigation into the decisions made by the DOJ in 2016 and 2017 related to their handling of the Secretary Hillary Clinton email investigation;
- Whereas, on November 3, 2017, Chairman Goodlatte, Chairman Gowdy, and four Members of Congress sent a letter to Attorney General Sessions and Deputy Attorney General Rosenstein requesting five specific categories of documents;
- Whereas, on December 12, 2017-, Chairman Goodlatte, Chairman Gowdy, and other Members sent a letter emphasizing the expectation that the Department provide all requested documents as well as a privilege log;
- Whereas, on February 1, 2018, Chairman Goodlatte sent a letter requesting documents related to potential Foreign Intelligence Surveillance Act abuses;
- Whereas the DOJ has missed document production deadlines, produced duplicative pages of information, and redacted pages to the point where they contain no probative information;
- Whereas the Committee on the Judiciary issued a subpoena to Deputy Attorney General Rosenstein on March 22, 2018, which compelled him to produce, among other things—
- (1) all documents and communications with the Foreign Intelligence Surveillance Court (FISC) referring or relating to any Foreign Intelligence Surveillance Act (FISA) applications associated with Carter Page or individuals on President Trump's 2016 presidential campaign or part of the Trump administration;
  - (2) all documents and communications referring or relating to FISC hearings and deliberations, including any court transcripts, related to any FISA applications associated with Carter Page or the Trump campaign or Trump administration;
  - (3) all documents and communications referring or relating to internal DOJ or FBI management requests to review, scrub, report on, or analyze any reporting of FISA collection involving, or coverage mentioning, the Trump campaign or Trump administration; and
  - (4) all documents and communications referring or relating to defensive briefings provided by the DOJ or FBI to the 2016 presidential campaigns of Hillary Clinton or President Trump;
- Whereas the DOJ has violated this congressional subpoena by failing to produce each of these categories of documents;
- Whereas Mr. Rosenstein and the DOJ have refused to provide an alternative timeline for providing these categories of documents;
- Whereas the DOJ has not provided a privilege log of the redactions with—
- (1) the privilege asserted;
  - (2) the type of document;
  - (3) the general subject matter;
  - (4) the date, author, and address; and

- (5) the relationship of the author and address to each other, if any document is withheld or redacted on the basis of a privilege;
- Whereas the DOJ has failed to comply an agreement negotiated with the Committee on the Judiciary and the Committee on Oversight and Government Reform to expedite the production of documents for this congressional investigation following the issuance of the March 22 subpoena;
- Whereas upon in camera review of documents at the DOJ, it was revealed the Department, under the supervision of Mr. Rosenstein, attempted to conceal certain facts as documents provided to Congress were heavily and unnecessarily redacted;
- Whereas the DOJ unnecessarily redacted the price of FBI Deputy Director Andrew McCabe's \$70,000 conference table because it was potentially embarrassing information;
- Whereas the DOJ redacted facts such as FBI Agent Peter Strzok's personal relationship with FISC Judge Rudolph Contreras;
- Whereas the DOJ redacted the names of high-ranking Obama administration officials, such as former White House Chief of Staff Denis McDonough;
- Whereas the DOJ acknowledged the unnecessary redactions and agreed that some information should not have been redacted in an April 16, 2018, letter;
- Whereas, on May 17, 2017, Deputy Attorney General Rosenstein appointed Robert S. Mueller III as the Special Counsel to investigate allegations of collusion between Donald Trump's presidential campaign and Russia;
- Whereas Deputy Attorney General Rosenstein authored the initial memo outlining the scope of the investigation in May 2017;
- Whereas Deputy Attorney General Rosenstein then sent a subsequent memo modifying parameters of the investigation to Special Counsel Robert S. Mueller III on August 2, 2017, and a heavily redacted version of the memo was made public;
- Whereas Mr. Rosenstein's memo began by noting "the following allegations were within the scope of the investigation at the time of your appointment and are within the scope of the order", with nearly everything following the mention of those initial allegations redacted;
- Whereas Mr. Rosenstein's memo raises fundamental concerns related to the government's basis for alleging "collusion" between the Trump campaign and Russia, and whether these allegations resulted in potential crimes warranting investigation;
- Whereas Mr. Rosenstein's memo also raises concerns given Special Counsel investigations are not warranted by the existence of mere allegations, and require there be facts evident warranting a "criminal investigation of a person or matter";
- Whereas the memo's status as a classified document and lack of unredacted material raise concerns the appointment of Robert S. Mueller III as Special Counsel began outside the scope of regulations for Special Counsel investigations by originating on a counterintelligence, rather than criminal, basis;
- Whereas, on April 9, 2018, Representative Mark Meadows and Representative Jim Jordan sent a letter to the DOJ requesting access to the unredacted August 2 memo in order to better understand the scope of the investigation authorized by Mr. Rosenstein;
- Whereas, on April 30, 2018, the DOJ responded in a letter indicating that they would not provide the information to Congress, despite Congress' oversight duty;
- Whereas press reports indicate, Mr. Rosenstein approved a FISA application to surveil Carter Page;
- Whereas the application included "salacious and unverified" material contained in a dossier written by former spy Christopher Steele;
- Whereas the House Intel Committee Majority memo indicates, the DOJ went before the FISA Court and failed to disclose or reference the role of the Democratic National Committee, the Clinton campaign, or any party or campaign in funding Steele's efforts;
- Whereas the House Intel Committee Majority memo indicates, the DOJ went before the Court and failed to disclose the relationship between Steele and the FBI;
- Whereas the House Intel Committee Majority memo indicates, DOJ went before the FISA Court and failed to acknowledge Steele was suspended and subsequently terminated as an FBI source for an authorized disclosure to the media;
- Whereas the House Intel Committee Majority memo indicates, The DOJ went before the FISA Court and failed to disclose issues with Steele's numerous encounters with the media violated the cardinal rule of source handling and maintaining confidentiality, therefore compromising his credibility as a source;

Whereas the House Permanent Select Committee on Intelligence issued a subpoena to Deputy Attorney General Rosenstein on April 30, 2018, requesting specific documents related to the misuse of FISA authorities by the DOJ and FBI;

Whereas the DOJ has failed to comply with this subpoena;

Whereas, on June 8, 2018, House Permanent Select Committee on Intelligence Chairman, Devin Nunes, sent a follow-up letter requesting the DOJ provide the Committee Members and designated staff full, unredacted access to the documents requested in the April 30, 2018, subpoena by Tuesday, June 12, 2018;

Whereas the DOJ did not comply with Chairman Nunes's June 12, 2018, deadline; and

Whereas in January 2018, Deputy Attorney General Rosenstein appears to have threatened to subpoena the calls and emails of Intelligence Committee staff in retaliation for requesting documents and investigating the DOJ: Now, therefore, be it

*Resolved*, That the House of Representatives compels the Department of Justice to—

- (1) fully comply with the March 22, 2018, subpoena issued by the House Committee on the Judiciary;
- (2) fully comply with the April 30, 2018, subpoena issued by the House Permanent Select Committee on Intelligence;
- (3) provide all documents requested by Congress; and
- (4) provide Members of Congress and designated staff with full access to unredacted documents.

### **Purpose and Summary**

H. Res. 938 is a non-binding resolution of inquiry that, as amended in Committee, demands that the Department of Justice comply with subpoenas issued by the House Committee on the Judiciary and the House Permanent Select Committee on Intelligence and that the Department provide all documents requested by Congress, including providing Members of Congress and designated staff with full access to unredacted documents.

### **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 calculating 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 re-

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

quire 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.

As amended during the Committee’s markup, H. Res. 938 demands that the Department of Justice fully comply with a subpoena issued by the House Committee on the Judiciary on March 22, 2018, and a subpoena issued by the House Permanent Select Committee on Intelligence on April 30, 2018. The documents and communications requested in these subpoenas relate to potential Foreign Intelligence Surveillance Act abuses by the Justice Department or the potential unequal treatment of the two presidential campaigns by the Department. H. Res. 938 also demands that the Department provide all other documents that have been requested by Congress and that the Department provide Members of Congress and designated staff with access to the requested documents in unredacted form.

### Hearings

The Committee on the Judiciary held no hearings on H. Res. 938.

### Committee Consideration

On June 26, 2018, the Committee met in open session and ordered the resolution (H. Res. 938) favorably reported by a roll call vote of 15–11, 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. 938.

1. Appeal the ruling of the Chair on the amendment offered by Mr. Jordan. Passed 16 to 13 (with 2 voting present).

<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.*

**ROLL CALL NO. 1**

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman .....			X
Mr. Sensenbrenner, Jr. (WI) .....			
Mr. Smith (TX) .....	X		
Mr. Chabot (OH) .....			X
Mr. Issa (CA) .....	X		
Mr. King (IA) .....	X		
Mr. Gohmert (TX) .....	X		
Mr. Jordan (OH) .....	X		
Mr. Poe (TX) .....			
Mr. Marino (PA) .....	X		
Mr. Gowdy (SC) .....			
Mr. Labrador (ID) .....	X		
Mr. Collins (GA) .....	X		
Mr. DeSantis (FL) .....	X		
Mr. Buck (CO) .....	X		
Mr. Ratcliffe (TX) .....			
Ms. Roby (AL) .....			
Mr. Gaetz (FL) .....	X		
Mr. Johnson (LA) .....	X		
Mr. Biggs (AZ) .....	X		
Mr. Rutherford (FL) .....	X		
Ms. Handel (GA) .....	X		
Mr. Rothfus (PA) .....	X		
Mr. Nadler (NY), Ranking Member .....		X	
Ms. Lofgren (CA) .....			
Ms. Jackson Lee (TX) .....		X	
Mr. Cohen (TN) .....		X	
Mr. Johnson (GA) .....			
Mr. Deutch (FL) .....		X	
Mr. Gutierrez (IL) .....			
Ms. Bass (CA) .....		X	
Mr. Richmond (LA) .....			
Mr. Jeffries (NY) .....		X	
Mr. Cicilline (RI) .....		X	
Mr. Swalwell (CA) .....		X	
Mr. Lieu (CA) .....		X	
Mr. Raskin (MD) .....		X	
Ms. Jayapal (WA) .....		X	
Mr. Schneider (IL) .....		X	
Ms. Demings (FL) .....		X	
Total .....	16	13	2

2. Motion to table the resolution. Failed 12 to 18.

**ROLL CALL NO. 2**

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman .....		X	
Mr. Sensenbrenner, Jr. (WI) .....			

## ROLL CALL NO. 2—Continued

	Ayes	Nays	Present
Mr. Smith (TX) .....		X	
Mr. Chabot (OH) .....		X	
Mr. Issa (CA) .....		X	
Mr. King (IA) .....		X	
Mr. Gohmert (TX) .....		X	
Mr. Jordan (OH) .....		X	
Mr. Poe (TX) .....			
Mr. Marino (PA) .....		X	
Mr. Gowdy (SC) .....			
Mr. Labrador (ID) .....		X	
Mr. Collins (GA) .....		X	
Mr. DeSantis (FL) .....		X	
Mr. Buck (CO) .....		X	
Mr. Ratcliffe (TX) .....		X	
Ms. Roby (AL) .....			
Mr. Gaetz (FL) .....		X	
Mr. Johnson (LA) .....		X	
Mr. Biggs (AZ) .....		X	
Mr. Rutherford (FL) .....		X	
Ms. Handel (GA) .....		X	
Mr. Rothfus (PA) .....			
Mr. Nadler (NY), Ranking Member .....	X		
Ms. Lofgren (CA) .....	X		
Ms. Jackson Lee (TX) .....	X		
Mr. Cohen (TN) .....	X		
Mr. Johnson (GA) .....	X		
Mr. Deutch (FL) .....			
Mr. Gutierrez (IL) .....			
Ms. Bass (CA) .....			
Mr. Richmond (LA) .....			
Mr. Jeffries (NY) .....	X		
Mr. Cicilline (RI) .....	X		
Mr. Swalwell (CA) .....			
Mr. Lieu (CA) .....	X		
Mr. Raskin (MD) .....	X		
Ms. Jayapal (WA) .....	X		
Mr. Schneider (IL) .....	X		
Ms. Demings (FL) .....	X		
Total .....	12	18	

3. An amendment offered by Mr. Cohen to request certain documents regarding the Trump Organization or any entity owned by President Trump. Failed 10 to 17.

## ROLL CALL NO. 3

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman .....		X	
Mr. Sensenbrenner, Jr. (WI) .....			

**ROLL CALL NO. 3—Continued**

	Ayes	Nays	Present
Mr. Smith (TX) .....			
Mr. Chabot (OH) .....		X	
Mr. Issa (CA) .....		X	
Mr. King (IA) .....		X	
Mr. Gohmert (TX) .....		X	
Mr. Jordan (OH) .....		X	
Mr. Poe (TX) .....			
Mr. Marino (PA) .....		X	
Mr. Gowdy (SC) .....			
Mr. Labrador (ID) .....		X	
Mr. Collins (GA) .....		X	
Mr. DeSantis (FL) .....		X	
Mr. Buck (CO) .....		X	
Mr. Ratcliffe (TX) .....		X	
Ms. Roby (AL) .....			
Mr. Gaetz (FL) .....		X	
Mr. Johnson (LA) .....		X	
Mr. Biggs (AZ) .....		X	
Mr. Rutherford (FL) .....		X	
Ms. Handel (GA) .....		X	
Mr. Rothfus (PA) .....			
Mr. Nadler (NY), Ranking Member .....	X		
Ms. Lofgren (CA) .....	X		
Ms. Jackson Lee (TX) .....	X		
Mr. Cohen (TN) .....	X		
Mr. Johnson (GA) .....	X		
Mr. Deutch (FL) .....			
Mr. Gutierrez (IL) .....			
Ms. Bass (CA) .....			
Mr. Richmond (LA) .....			
Mr. Jeffries (NY) .....	X		
Mr. Cicilline (RI) .....			
Mr. Swalwell (CA) .....			
Mr. Lieu (CA) .....	X		
Mr. Raskin (MD) .....	X		
Ms. Jayapal (WA) .....			
Mr. Schneider (IL) .....	X		
Ms. Demings (FL) .....	X		
Total .....	10	17	

4. An amendment offered by Ms. Jackson Lee to request certain documents related to unaccompanied alien children. Failed 11 to 16.

**ROLL CALL NO. 4**

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman .....		X	
Mr. Sensenbrenner, Jr. (WI) .....			

**ROLL CALL NO. 4**—Continued

	Ayes	Nays	Present
Mr. Smith (TX) .....			
Mr. Chabot (OH) .....		X	
Mr. Issa (CA) .....			
Mr. King (IA) .....		X	
Mr. Gohmert (TX) .....		X	
Mr. Jordan (OH) .....		X	
Mr. Poe (TX) .....		X	
Mr. Marino (PA) .....		X	
Mr. Gowdy (SC) .....			
Mr. Labrador (ID) .....		X	
Mr. Collins (GA) .....		X	
Mr. DeSantis (FL) .....		X	
Mr. Buck (CO) .....		X	
Mr. Ratcliffe (TX) .....		X	
Ms. Roby (AL) .....			
Mr. Gaetz (FL) .....		X	
Mr. Johnson (LA) .....			
Mr. Biggs (AZ) .....		X	
Mr. Rutherford (FL) .....		X	
Ms. Handel (GA) .....		X	
Mr. Rothfus (PA) .....			
Mr. Nadler (NY), Ranking Member .....	X		
Ms. Lofgren (CA) .....	X		
Ms. Jackson Lee (TX) .....	X		
Mr. Cohen (TN) .....	X		
Mr. Johnson (GA) .....	X		
Mr. Deutch (FL) .....			
Mr. Gutierrez (IL) .....			
Ms. Bass (CA) .....			
Mr. Richmond (LA) .....			
Mr. Jeffries (NY) .....	X		
Mr. Cicilline (RI) .....	X		
Mr. Swalwell (CA) .....			
Mr. Lieu (CA) .....	X		
Mr. Raskin (MD) .....	X		
Ms. Jayapal (WA) .....			
Mr. Schneider (IL) .....	X		
Ms. Demings (FL) .....	X		
Total .....	11	16	

5. Motion to order the previous question. Passed 16 to 11.

**ROLL CALL NO. 5**

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman .....	X		
Mr. Sensenbrenner, Jr. (WI) .....			
Mr. Smith (TX) .....			
Mr. Chabot (OH) .....	X		

**ROLL CALL NO. 5—Continued**

	Ayes	Nays	Present
Mr. Issa (CA) .....	X		
Mr. King (IA) .....	X		
Mr. Gohmert (TX) .....	X		
Mr. Jordan (OH) .....	X		
Mr. Poe (TX) .....			
Mr. Marino (PA) .....	X		
Mr. Gowdy (SC) .....			
Mr. Labrador (ID) .....	X		
Mr. Collins (GA) .....	X		
Mr. DeSantis (FL) .....	X		
Mr. Buck (CO) .....	X		
Mr. Ratcliffe (TX) .....	X		
Ms. Roby (AL) .....			
Mr. Gaetz (FL) .....	X		
Mr. Johnson (LA) .....			
Mr. Biggs (AZ) .....	X		
Mr. Rutherford (FL) .....	X		
Ms. Handel (GA) .....	X		
Mr. Rothfus (PA) .....			
Mr. Nadler (NY), Ranking Member .....		X	
Ms. Lofgren (CA) .....		X	
Ms. Jackson Lee (TX) .....		X	
Mr. Cohen (TN) .....		X	
Mr. Johnson (GA) .....		X	
Mr. Deutch (FL) .....			
Mr. Gutierrez (IL) .....			
Ms. Bass (CA) .....			
Mr. Richmond (LA) .....			
Mr. Jeffries (NY) .....		X	
Mr. Cicilline (RI) .....		X	
Mr. Swalwell (CA) .....			
Mr. Lieu (CA) .....		X	
Mr. Raskin (MD) .....		X	
Ms. Jayapal (WA) .....			
Mr. Schneider (IL) .....		X	
Ms. Demings (FL) .....		X	
Total .....	16	11	

6. An amendment in the nature of a substitute offered by Chairman Goodlatte. Passed 16 to 10.

**ROLL CALL NO. 6**

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman .....	X		
Mr. Sensenbrenner, Jr. (WI) .....			
Mr. Smith (TX) .....			
Mr. Chabot (OH) .....	X		
Mr. Issa (CA) .....	X		

**ROLL CALL NO. 6**—Continued

	Ayes	Nays	Present
Mr. King (IA) .....	X		
Mr. Gohmert (TX) .....	X		
Mr. Jordan (OH) .....	X		
Mr. Poe (TX) .....			
Mr. Marino (PA) .....	X		
Mr. Gowdy (SC) .....			
Mr. Labrador (ID) .....	X		
Mr. Collins (GA) .....	X		
Mr. DeSantis (FL) .....	X		
Mr. Buck (CO) .....	X		
Mr. Ratcliffe (TX) .....	X		
Ms. Roby (AL) .....			
Mr. Gaetz (FL) .....	X		
Mr. Johnson (LA) .....			
Mr. Biggs (AZ) .....	X		
Mr. Rutherford (FL) .....	X		
Ms. Handel (GA) .....	X		
Mr. Rothfus (PA) .....			
Mr. Nadler (NY), Ranking Member .....		X	
Ms. Lofgren (CA) .....		X	
Ms. Jackson Lee (TX) .....		X	
Mr. Cohen (TN) .....		X	
Mr. Johnson (GA) .....		X	
Mr. Deutch (FL) .....			
Mr. Gutierrez (IL) .....			
Ms. Bass (CA) .....			
Mr. Richmond (LA) .....			
Mr. Jeffries (NY) .....			
Mr. Cicilline (RI) .....		X	
Mr. Swalwell (CA) .....			
Mr. Lieu (CA) .....		X	
Mr. Raskin (MD) .....		X	
Ms. Jayapal (WA) .....			
Mr. Schneider (IL) .....		X	
Ms. Demings (FL) .....		X	
Total .....	16	10	

7. Motion to report H. Res. 938 favorably to the House. Approved 15 to 11.

**ROLL CALL NO. 7**

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman .....	X		
Mr. Sensenbrenner, Jr. (WI) .....			
Mr. Smith (TX) .....			
Mr. Chabot (OH) .....	X		
Mr. Issa (CA) .....			
Mr. King (IA) .....	X		

**ROLL CALL NO. 7—Continued**

	Ayes	Nays	Present
Mr. Gohmert (TX) .....	X		
Mr. Jordan (OH) .....	X		
Mr. Poe (TX) .....			
Mr. Marino (PA) .....	X		
Mr. Gowdy (SC) .....			
Mr. Labrador (ID) .....	X		
Mr. Collins (GA) .....	X		
Mr. DeSantis (FL) .....	X		
Mr. Buck (CO) .....	X		
Mr. Ratcliffe (TX) .....	X		
Ms. Roby (AL) .....			
Mr. Gaetz (FL) .....	X		
Mr. Johnson (LA) .....			
Mr. Biggs (AZ) .....	X		
Mr. Rutherford (FL) .....	X		
Ms. Handel (GA) .....	X		
Mr. Rothfus (PA) .....			
Mr. Nadler (NY), Ranking Member .....		X	
Ms. Lofgren (CA) .....		X	
Ms. Jackson Lee (TX) .....		X	
Mr. Cohen (TN) .....		X	
Mr. Johnson (GA) .....		X	
Mr. Deutch (FL) .....			
Mr. Gutierrez (IL) .....			
Ms. Bass (CA) .....			
Mr. Richmond (LA) .....			
Mr. Jeffries (NY) .....			
Mr. Cicilline (RI) .....		X	
Mr. Swalwell (CA) .....		X	
Mr. Lieu (CA) .....		X	
Mr. Raskin (MD) .....		X	
Ms. Jayapal (WA) .....			
Mr. Schneider (IL) .....		X	
Ms. Demings (FL) .....		X	
Total .....	15	11	

**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. 938 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. 938 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. 938 demands that the Department of Justice comply with subpoenas issued by the Judiciary and Intelligence Committees and provide Congress with all documents that have been requested from the Department.

### **Advisory on Earmarks**

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H. Res. 938 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. 938, a non-binding resolution of inquiry, demands that the Department of Justice comply with subpoenas issued by the House Committee on the Judiciary and the House Permanent Select Committee on Intelligence and that the Department provide all documents requested by Congress, including providing Members of Congress and designated staff with full access to unredacted documents.

### **Dissenting Views**

Originally intended as a resolution of inquiry, H. Res. 938 is a sense of Congress resolution that does not carry the force of law, but which nonetheless purports to “compel” the Department of Justice to comply with two ill-advised subpoenas, only one of which may be enforceable, and contains the vague command to “provide all documents requested by Congress.” H. Res. 938 is unnecessary legislation that does not advance Congress’s oversight interests,

but merely serves as a convenient vehicle for the Majority's ongoing public attacks on the integrity of the U.S. Department of Justice (DOJ).

#### DESCRIPTION AND BACKGROUND

Under the rules and precedents of the House, a resolution of inquiry is used to obtain information from the executive branch. A resolution of inquiry is directed at the President or the head of a Cabinet-level agency, requesting facts within the control of the executive branch.<sup>1</sup> As a "simple resolution" (designated by "H. Res."), a resolution of inquiry does not carry the force of law. Thus, "compliance by the executive branch with the House's request is voluntary, resting largely on a sense of comity between co-equal branches of government and a recognition of the necessity for Congress to be well-informed as it legislates."<sup>2</sup>

House Rules afford resolutions of inquiry a privileged parliamentary status. A Member files a resolution of inquiry like any other legislation. The resolution is then referred to the proper committee of jurisdiction. If the committee does not report the resolution to the House within 14 legislative days of its introduction, however, a motion to discharge the resolution from committee can be made on the House floor.<sup>3</sup> In practice, even when the Majority opposes a resolution of inquiry, a committee will mark it up and report it adversely to prevent its sponsor from making a privileged motion to call up the legislation on the House floor.<sup>4</sup>

Rep. Mark Meadows (R-NC) introduced H. Res. 938 on June 13, 2018, together with original cosponsors Reps. Jim Jordan (R-OH), Matt Gaetz (R-FL), and Scott Perry (R-PA). As introduced, H. Res. 938 directed the Attorney General to produce information related to the joint Judiciary Committee and Oversight & Government Reform Committee investigation of certain prosecutorial and investigatory decisions made by the DOJ and Federal Bureau of Investigation (FBI) surrounding the 2016 presidential election. Specifically, the resolution requested documents related to the Foreign Intelligence Surveillance Act (FISA) applications made by the FBI to investigate former Trump campaign advisor Carter Page, as well as other Trump campaign and Administration officials.

H. Res. 938 as amended, however, replaced this focused inquiry with a preamble, essentially reducing the legislation to a sense of Congress resolution. The preamble enumerates, among other points: the Majority's previously made demands for documents from the Department of Justice as part of the Judiciary Committee's joint investigation with the Committee on Oversight and Government Reform into former Secretary of State Hillary Clinton's use of a private email server; a separate demand for information made by House Permanent Select Committee on Intelligence (HPSCI) Chairman Devin Nunes (R-CA); and demands for documents related to the early stages of the counterintelligence investigation into Russian interference in the 2016 presidential election

<sup>1</sup>Christopher M. Davis, *Resolutions of Inquiry: An Analysis of Their Use in the House, 1947-2011*, CONG. RESEARCH SERVICE, May 15, 2012 (R40879).

<sup>2</sup>*Id.* at 2.

<sup>3</sup>House Rule XIII, clause 7.

<sup>4</sup>Davis, *supra* note 1, at 1.

included in the introduced text. It resolves that the House of Representatives compel DOJ to—

- (1) fully comply with the March 22, 2018, subpoena issued by the House Committee on the Judiciary;
- (2) fully comply with the April 30, 2018, subpoena issued by the House Permanent Select Committee on Intelligence;
- (3) provide all documents requested by Congress; and
- (4) provide Members of Congress and designated staff with full access to unredacted documents.

H. RES. 938 DOES NOT ADVANCE CONGRESSIONAL OVERSIGHT INTERESTS AND SERVES ONLY AS PRETEXT TO UNDERMINE THE DEPARTMENT OF JUSTICE AND DEPUTY ATTORNEY GENERAL ROD ROSENSTEIN

H. Res. 938 represents a further escalation of the Majority’s effort to generate partisan conflict between the Department of Justice and Congress over the FBI’s handling of the investigation into former Secretary Clinton’s private email server. After having had the central thesis of their argument that Secretary Clinton received special treatment during the investigation rebutted by the DOJ Inspector General (IG), the Majority now seeks to expand its investigation to include the opening stages of the investigation into the Trump campaign’s potential links to the Russian government. Indeed, it has become clear that the real purpose of H. Res. 938—and the investigation the resolution purports has been stymied by DOJ—is to undermine Deputy Attorney General Rod Rosenstein and, by extension, the Special Counsel’s investigation.

The Committee has spent considerable resources on an unnecessary investigation into the FBI’s handling of its investigation into former Secretary Clinton’s private email server.<sup>5</sup> The joint investigation continues despite the DOJ IG’s recent finding that the decisions made by the DOJ and the FBI during the Clinton email investigation were reasonable and supported by the law, the facts, and Department policy. The IG found no testimonial or documentary evidence that any political bias influenced the investigative steps taken by the Department.

Nonetheless, the Department of Justice has and continues to make a good faith effort to respond to the Majority’s document demands. In response to a series of demand letters by Chairman Bob Goodlatte, as recited in H. Res. 938,<sup>6</sup> the DOJ has been continuously/consistently providing responsive documents related to the 2016 Clinton email investigation, as well as the text messages shared by FBI agent Peter Strzok and FBI attorney Lisa Page. The document production has occurred on at least a weekly basis since January 2018. This effort has been supplemented by a massive pro-

<sup>5</sup> Press Release, Chairman Bob Goodlatte, H. Comm. on Judiciary, Goodlatte, Gowdy Open Investigation into Decisions Made by DOJ in 2016 (Oct. 24, 2017).

<sup>6</sup> Letter from Chairman Bob Goodlatte, H. Comm. on the Judiciary, Chairman Trey Gowdy, H. Comm. on Oversight & Gov’t Reform, et al., to U.S. Attorney General Jeff Sessions & Deputy Attorney General Rod Rosenstein (Nov. 3, 2017); Letter from Chairman Bob Goodlatte, H. Comm. on the Judiciary, Chairman Trey Gowdy, H. Comm. on Oversight & Gov’t Reform, et al., to U.S. Attorney General Jeff Sessions & Deputy Attorney General Rod Rosenstein (Dec. 20, 2017); Letter from Chairman Bob Goodlatte, H. Comm. on the Judiciary, to U.S. Attorney General Jeff Sessions & Deputy Attorney General Rod Rosenstein (Dec. 6, 2017); Letter from Chairman Bob Goodlatte, H. Comm. on the Judiciary, Chairman Trey Gowdy, H. Comm. on Oversight & Gov’t Reform, et al., to U.S. Attorney General Jeff Sessions & Deputy Attorney General Rod Rosenstein (Dec. 12, 2017).

duction of text messages as well as the aforementioned DOJ IG report.<sup>7</sup> The Committee has also conducted transcribed interviews with several current and former FBI officials associated with the Clinton email investigation. To date, the Committee has interviewed: former Deputy Director Andrew McCabe; James Rybicki, former chief of staff to former Director James Comey; Bill Preistap, Assistant Director of the Counterintelligence Division; John Giacalone, former Executive Assistant Director of the National Security Branch; and Deputy Assistant Director Peter Strzok.

H. Res. 938 also reiterates the Majority’s demands for documents and information related to early investigative steps taken by the FBI after opening a counterintelligence investigation into Trump campaign officials’ apparent contacts with Russian agents. The Majority argues that these early investigative steps were initiated by a cabal of “politically biased” FBI agents lead by Peter Strzok and Lisa Page, based solely on “opposition research”—i.e. the Steele Dossier—funded by Democratic operatives, and that this bias taints the entire investigation into Russian interference in the 2016 presidential election.<sup>8</sup> No credible evidence supports these allegations. Furthermore, Department officials have repeatedly explained to the Majority that longstanding Department policy prohibits the release of certain information related to ongoing criminal investigations.

Despite the Department’s good faith efforts to comply with the Majority’s oversight demands, Chairman Goodlatte issued on March 22, 2018 a unilateral subpoena to the DOJ asking for: (1) evidence provided to the Inspector General as part of its Clinton email investigation report; (2) personnel information on any individual associated with the declination decision related to Secretary Clinton; (3) cases supporting this decision; (4) materials related to the Office of Professional Responsibility’s decision to fire Deputy Director McCabe; (5) any evidence, documents, or communications related to the FISA applications on Carter Page or any individuals associated with the Trump campaign and Administration, including evidence to public reporting of the applications; (6) any documents related to Foreign Intelligence Surveillance Court (FISC) hearings associated with the Page or Trump FISA applications; (7) documents related to defensive briefings provided to both campaigns in 2016; and (8) documents and communications related to the Clinton Foundation investigation.<sup>9</sup>

In a June 21, 2018 letter, Ranking Member Jerrold Nadler (D-NY) notified Chairman Goodlatte that this subpoena does not comply with Committee rules and is therefore unenforceable.<sup>10</sup> Committee rules require consultation with the Ranking Member in advance—and the Chairman must provide the Ranking Member with a “full copy of the proposed subpoena” at that time.<sup>11</sup> On March 19,

<sup>7</sup> U.S. DEPT OF JUSTICE, OFFICE OF INSPECTOR GENERAL, A REVIEW OF VARIOUS ACTIONS BY THE FEDERAL BUREAU OF INVESTIGATION AND DEPARTMENT OF JUSTICE IN ADVANCE OF THE 2016 ELECTION, OVERSIGHT & REV. DIV. NO. 18–04 (June 2018).

<sup>8</sup> See Louis Jacobson, *Fact-checking Donald Trump’s claims about Democrats on Robert Mueller’s team*, POLITIFACT, Mar. 21, 2018.

<sup>9</sup> Subpoena from Chairman Bob Goodlatte, H. Comm. on the Judiciary, Chairman Trey Gowdy, H. Comm. on Oversight & Gov’t Reform, et al., to U.S. Deputy Attorney General Rod Rosenstein, Mar. 22, 2018.

<sup>10</sup> Letter from Ranking Member Jerrold Nadler, H. Comm. on the Judiciary, to Chairman Bob Goodlatte, H. Comm. on the Judiciary (June 21, 2018).

<sup>11</sup> “At least two business days before issuing any subpoena pursuant to subsection (a), the Chair shall consult with the Ranking Member regarding the authorization and issuance of such subpoena, and the Chair shall provide a full copy of the proposed subpoena, including any pro-

2018, the Majority provided Ranking Member Nadler with a version of a subpoena substantially different from the subpoena ultimately issued on March 22. After consulting with the House Parliamentarian and several former House counsels, Ranking Member Nadler concluded that “the subpoena that eventually issued is likely unenforceable as a matter of law.”<sup>12</sup>

At the Committee’s markup, Rep. Jordan offered an amendment substituting the text of H. Res. 938 largely with the text of H. Res. 937, a resolution expressing the sense of the Congress that the DOJ, within seven days of enactment, must provide certain documents in its possession to the House of Representatives relating to the ongoing congressional investigation of certain prosecutorial and investigatory decisions made by the Department and the FBI regarding the 2016 presidential election. Rep. Jordan’s amendment was clearly non-germane on two grounds: (1) the subject matter of the amendment was far broader than the underlying text of H. Res. 938; and (2) the amendment broke the resolution’s privileged parliamentary status.

In 1998, the Chairman of the Committee set a precedent: “To a privileged resolution of impeachment, an amendment proposing instead censure, which is not privileged, was held not germane.”<sup>13</sup> That precedent applies to resolutions of inquiry as they also enjoy privileged parliamentary status. Thus, an amendment that makes the underlying privileged resolution “not privileged” is not germane. Furthermore, House precedent states that to enjoy privilege a resolution of inquiry should call for facts rather than opinions,<sup>14</sup> should not call for an investigation,<sup>15</sup> and should not present a preamble.<sup>16</sup> Rep. Jordan’s amendment was clearly non-germane.

Yet, on a party line vote, the Majority overruled the determination made by their own acting Chairman that Rep. Jordan’s amendment was non-germane. And incredibly, during the vote, acting Chairman Steve Chabot (R-OH) refused to uphold his own ruling. Instead, both he and Chairman Goodlatte voted “present.” Only the Minority Members at the markup voted to uphold the rules of the House and the ruling of the acting Chair. Without doubt, the Majority’s flagrant violation of its own Committee rules and those of the House demonstrates that the Majority’s true goal is to undermine the DOJ, its Deputy Attorney General, and the rule of law.

Finally, it must be noted that the Majority scheduled the markup of H. Res. 938 a mere two days before they scheduled Mr. Rosenstein to testify at a hearing before the Committee on June 28, 2018. The Majority engineered this sequence of events by violating the Committee’s rule requiring the Chairman to provide seven days’ advance notice of a hearing to Members. Worse, on the day of the hearing with Mr. Rosenstein, the Majority scheduled a floor vote on H. Res. 970, an alternate resolution substantially similar in subject matter to H. Res. 938. And to add further insult to com-

posed document schedule, at that time.” Rule IV(c), Rules of Procedure, H. Comm. on the Judiciary, 115th Cong., adopted Jan. 24, 2017.

<sup>12</sup> Nadler letter, *supra* note 10.

<sup>13</sup> JEFFERSON’S MANUAL, at 320.

<sup>14</sup> 3 Hinds §§ 1872, 1873; 6 Cannon § 413; Deschler Ch. 15 § 2; 93–1, Mar. 6, 1973, pp 6383–85.

<sup>15</sup> 3 Hinds §§ 1872–1874; 6 Cannon §§ 427, 429, 432; 93–1, Mar. 6, 1973, pp 6383–85.

<sup>16</sup> 3 Hinds §§ 1877, 1878; 6 Cannon §§ 422, 427.

ity, the Majority abandoned longstanding committee practice and refused to recess the hearing during floor consideration of H. Res. 970.

Thus, on June 28, 2018, the House voted on a resolution the Committee never considered that wrongfully condemned the DOJ for purportedly failing to comply with congressional oversight requests, and that served as a symbolic public ultimatum to Mr. Rosenstein—all before he had a chance to defend himself and the Department against the Majority’s spurious accusations. The Majority’s multiple violations of Committee and House comity clearly underscore the fact that their effort in favorably ordering the report of H. Res. 938, as amended, was a public charade devoid of process and legality.

#### CONCLUSION

H. Res. 938 advances no legitimate oversight interest and serves merely as a vehicle to aid President Trump’s assault on the integrity of the Department of Justice. Even worse, the Majority’s conduct during the markup of H. Res. 938 flouted basic and longstanding principles of committee process as well as the rules governing the House. This conduct and the circumstances surrounding the markup’s timing sadly demonstrate that the Majority has abandoned the Committee’s oversight responsibilities in an effort to aid the Trump Administration even at the expense of adhering to the most fundamental rules of law, precedent, and practice. The only saving grace in this whole debacle is that H. Res. 938 does not carry the force of law.

For the forgoing reasons, we dissent.

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.  
 MS. DEMINGS.

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