

112TH CONGRESS
2D SESSION

S. RES. 489

Expressing the sense of the Senate on the appointment by the Attorney General of an outside special counsel to investigate certain recent leaks of apparently classified and highly sensitive information on United States military and intelligence plans, programs, and operations.

IN THE SENATE OF THE UNITED STATES

JUNE 12, 2012

Mr. MCCAIN (for himself, Mr. INHOFE, Mr. WICKER, Mr. BROWN of Massachusetts, Ms. AYOTTE, Mr. PORTMAN, Ms. COLLINS, Mr. GRAHAM, Mr. CORNYN, Mr. BURR, Mr. ROBERTS, Mr. BLUNT, Mr. COBURN, Mr. PAUL, Mr. BOOZMAN, Mr. ISAKSON, Mr. GRASSLEY, Mr. KIRK, Mr. CHAMBLISS, Mr. RUBIO, and Mr. HOEVEN) submitted the following resolution; which was referred to the Committee on the Judiciary

RESOLUTION

Expressing the sense of the Senate on the appointment by the Attorney General of an outside special counsel to investigate certain recent leaks of apparently classified and highly sensitive information on United States military and intelligence plans, programs, and operations.

Whereas over the past few weeks, several publications have been released that cite several highly sensitive United States military and intelligence counterterrorism plans, programs, and operations;

Whereas these publications appear to be based in substantial part on unauthorized disclosures of classified information;

Whereas the unauthorized disclosure of classified information is a felony under Federal law;

Whereas the identity of the sources in these publications include senior administration officials, participants in these reported plans, programs, and operations, and current American officials who spoke anonymously about these reported plans, programs, and operations because they remain classified, parts of them are ongoing, or both;

Whereas such unauthorized disclosures may inhibit the ability of the United States to employ the same or similar plans, programs, or operations in the future; put at risk the national security of the United States and the safety of the men and women sworn to protect it; and dismay our allies;

Whereas under Federal law, the Attorney General may appoint an outside special counsel when an investigation or prosecution would present a conflict of interest or other extraordinary circumstances and when doing so would serve the public interest;

Whereas investigations of unauthorized disclosures of classified information are ordinarily conducted by the Federal Bureau of Investigation with assistance from prosecutors in the National Security Division of the Department of Justice;

Whereas there is precedent for officials in the National Security Division of the Department of Justice to recuse itself from such investigations to avoid even the appearance of impropriety or undue influence, and it appears that there

have been such recusals with respect to the investigation of at least one of these unauthorized disclosures;

Whereas such recusals are indicative of the serious complications already facing the Department of Justice in investigating these matters;

Whereas the severity of the national security implications of these disclosures; the imperative for investigations of these disclosures to be conducted independently so as to avoid even the appearance of impropriety or undue influence; and the need to conduct these investigations expeditiously to ensure timely mitigation constitute extraordinary circumstances; and

Whereas, for the foregoing reasons, the appointment of an outside special counsel would serve the public interest: Now, therefore, be it

1 *Resolved*, That it is the sense of the Senate that—

2 (1) the Attorney General should—

3 (A) delegate to an outside special counsel
4 all of the authority of the Attorney General
5 with respect to investigations by the Department
6 of Justice of any and all unauthorized disclosures
7 of classified and highly sensitive information
8 related to various United States military
9 and intelligence plans, programs, and operations
10 reported in recent publications; and

11 (B) direct an outside special counsel to exercise
12 that authority independently of the su-

1 pervision or control of any officer of the De-
2 partment of Justice;

3 (2) under such authority, the outside special
4 counsel should investigate any and all unauthorized
5 disclosures of classified and highly sensitive informa-
6 tion on which such recent publications were based
7 and, where appropriate, prosecute those responsible;
8 and

9 (3) the President should assess—

10 (A) whether any such unauthorized disclo-
11 sures of classified and highly sensitive informa-
12 tion damaged the national security of the
13 United States; and

14 (B) how such damage can be mitigated.

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