

speaks of Members of Congress as well as Presidential elections. It is very clear they do not want it going to the Members of Congress question.

I still say I am disappointed not to hear why we have broken decades and decades and decades of tradition to bring up something obviously aimed directly at the President of the United States as he leaves for a summit meeting with the President of the only other nuclear superpower. It has never been done, it has never been allowed by majority leaders of either Republicans or Democrats with either Republican or Democratic Presidents. Perhaps at some point in this Congress we will go back to the traditions of comity that we have seen before. But, in the meantime, let us vote on this resolution, but let us also vote on Senate Joint Resolution 23, which would include the Congress. I call on all my colleagues to be courageous enough to speak up and say we will support investigations of ourselves as well as the President.

I yield the floor.

The PRESIDING OFFICER. All time has expired. The question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The joint resolution having been read the third time, the question is on the passage of the joint resolution. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 55, nays 44, as follows:

[Rollcall Vote No. 32 Leg.]

YEAS—55

Abraham	Frist	McConnell
Allard	Gorton	Murkowski
Ashcroft	Gramm	Nickles
Bennett	Grams	Roberts
Bond	Grassley	Roth
Brownback	Gregg	Santorum
Burns	Hagel	Sessions
Campbell	Hatch	Shelby
Chafee	Helms	Smith, Bob
Coats	Hutchinson	Smith, Gordon
Cochran	Hutchison	H.
Collins	Inhofe	Snowe
Coverdell	Jeffords	Specter
Craig	Kempthorne	Stevens
D'Amato	Kyl	Thomas
DeWine	Lott	Thompson
Domenici	Lugar	Thurmond
Enzi	Mack	Warner
Faircloth	McCain	

NAYS—44

Akaka	Feinstein	Levin
Baucus	Ford	Lieberman
Biden	Glenn	Mikulski
Bingaman	Graham	Moseley-Braun
Boxer	Harkin	Moynihan
Breaux	Hollings	Murray
Bryan	Inouye	Reed
Bumpers	Johnson	Reid
Byrd	Kennedy	Robb
Cleland	Kerrey	Rockefeller
Conrad	Kerry	Sarbanes
Daschle	Kohl	Torricelli
Dorgan	Landrieu	Wellstone
Durbin	Lautenberg	Wyden
Feingold	Leahy	

ANSWERED "PRESENT"—1

Dodd

The joint resolution was passed.

The preamble was agreed to.

The joint resolution (S.J. Res. 22), with its preamble, reads as follows:

S.J. RES. 22

Whereas 28 U.S.C. §§591 et seq., allows the Attorney General to make application to the Special Division of the United States Court of Appeals for the District of Columbia for the appointment of an independent counsel when there is specific and credible information that there may have been violations of Federal criminal law (other than a class B or C misdemeanor or infraction) and the investigation of such violations by the Department of Justice may result in a political conflict of interest;

Whereas this Attorney General has previously exercised that discretion to apply for the appointment of an independent counsel to investigate the Whitewater matter on the basis of a political conflict of interest;

Whereas there has been specific, credible information reported in the media that officers and agents of the Democratic National Committee and the President's reelection campaign may have violated Federal criminal laws governing political fundraising activities in connection with the 1996 Presidential election campaign;

Whereas, according to reports in the media, the Attorney General has found such allegations of sufficient gravity that she has created a task force within the Department of Justice and convened a grand jury to further investigate them;

Whereas there has been specific, credible information reported in the media that senior White House officials took an active role in and supervised the activities of the President's reelection campaign and the Democratic National Committee in connection with the 1996 Presidential election campaign;

Whereas there is specific, credible information reported in the media that the decision-making structure and implementation of fundraising activities carried out by the Democratic National Committee and the President's reelection campaign were supervised by White House officials, including the President and Vice President; and

Whereas it is apparent that any investigation by the Department of Justice allegations concerning the fundraising activities of the Democratic National Committee and the President's reelection campaign will result in a political conflict of interest because such an investigation will involve those senior White House officials who took an active role in and supervised the activities of the President's reelection campaign and the Democratic National Committee: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That it is the sense of the Congress that the Attorney General should make application to the Special Division of the United States Court of Appeals for the District of Columbia for the appointment of an independent counsel to investigate allegations of illegal fundraising in the 1996 Presidential election campaign.

RELATIVE TO THE DECISION OF THE ATTORNEY GENERAL ON THE INDEPENDENT COUNSEL PROCESS

The PRESIDING OFFICER. The Chair lays before the Senate Senate Joint Resolution 23 for 2 minutes of debate equally divided.

The clerk will report.

The legislative clerk read as follows:

A joint resolution (S.J. Res. 23) expressing the sense of the Congress that the Attorney

General should exercise her best professional judgment, without regard to political pressures, on whether to invoke the independent counsel process to investigate alleged criminal misconduct relating to any election campaign.

The Senate resumed consideration of the joint resolution.

The PRESIDING OFFICER. Who yields time?

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, the full scope of fundraising irregularities on both sides of the aisle and on both ends of Pennsylvania Avenue should be the subject of investigation.

Today, we have seen reports that a lobbyist for a foreign government was being shaken down and a foreign ambassador was contacted in this regard by the House Member who chairs the committee charged with investigating allegations of fundraising abuses.

The resolution that many just voted for carefully excludes any attention to congressional conduct. The resolution on which we are now prepared to vote lets the chips fall where they may. It includes congressional election campaign activities.

Having just voted to instruct the Attorney General to apply for an independent counsel to investigate those with the Presidential campaign, let us proceed to support—not dodge by trying to table—a resolution that would allow the Attorney General to proceed with respect to congressional fundraising abuses, as well. Otherwise, the American people are going to see this as a blatant political attack on the President as he goes to Helsinki that excludes any attention to ourselves.

Mr. BENNETT addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, as my friends on the Democratic side of the aisle have so often reminded us during the debate, there is a mechanism going forward in the Governmental Affairs Committee to investigate all aspects of the 1996 campaign, congressional as well as Presidential. This is clearly not the function of an independent counsel.

The function of an independent counsel is to investigate allegations of the most serious and difficult kinds of lawbreaking. I know of no such allegations that would require a special counsel in the area outside of those that we have talked about during the debate. Therefore, I intend to vote against this resolution because it does not address the problem that we face. Whatever problem is there will be clearly handled, and handled competently, by the Governmental Affairs Committee.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. LOTT. Mr. President, I move to table Senate Joint Resolution 23 and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table Senate Joint Resolution 23. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, under Federal law, the Attorney General may conduct a preliminary investigation to determine whether to apply to the special division of the Court of Appeals for the D.C. Circuit for appointment of an independent counsel whenever she receives specific information from a credible source constituting grounds for investigating whether a Federal criminal law was violated by a specified category of executive branch officials, or where she determines that there are grounds for investigating whether a criminal law has been violated, and conducting the investigation would create a conflict of interest. If, after conducting a preliminary investigation, the Attorney General determines that further investigation is warranted, she shall apply for the appointment of an independent counsel. The appointment of an independent counsel is a serious matter and one which the Attorney General should only initiate when necessary. That is why I, and many others, had refrained from joining the assortment of calls for Attorney General Reno to appoint an independent counsel in connection with the 1996 Presidential campaign.

Yet, last week, all 10 Republicans on the Judiciary Committee felt the time had come to request such an appointment. We sent a letter to the Attorney General, as we are authorized to do by the independent counsel statute, requesting that she make an application for an independent counsel.

I must confess, as I did then, to a degree of frustration with the Independent Counsel Act. Did I appreciate having to send our letter? Certainly not. However, the law sets forth a specific process by which Congress is to request that the Attorney General begin the process by which an independent counsel is appointed, and this process requires the Judiciary Committee to make what the other party will inevitably characterize as partisan charges in order to trigger the Attorney General's responsibilities. In order for Congress to trigger the most preliminary steps for the Department of Justice to take to consider the need for an independent counsel, the law essentially provides that the party not in control of the executive branch make specific charges when and if the Attorney General fails to act on her own. I would have preferred to have had the Attorney General seek an independent counsel on her own. But she has not

done so. At the very least, I would have preferred that she conduct a preliminary investigation on her own. But she has refused to do even this. I would have preferred to have requested that she seek an independent counsel without having to set forth, in such a public manner as the law requires, the specific and credible evidence which warrants such an appointment. But in order for us to require the Attorney General to take certain minimal steps toward investigating whether an independent counsel is warranted, we were required by law to send our letter. In short, the Independent Counsel Act is the law of the land and, notwithstanding its relative flaws, we on the Judiciary Committee have an obligation to abide by it.

I am hopeful that Attorney General Reno, for whom I continue to have great respect, will appreciate the concerns set forth in our letter, and will agree that an independent counsel should be appointed forthwith to investigate these matters. Recent developments have, I believe, made clear that a thorough Justice Department investigation into possible fundraising violations in connection with the 1996 Presidential campaign will raise an inherent conflict of interest, and certainly raises at least the appearance of such a conflict, and that the appointment of an independent counsel is therefore required to ensure public confidence in the integrity of our electoral process and system of justice.

With respect to the proposed alternative resolution proposed by some of my colleagues on the other side of the aisle, Senate Joint Resolution 23, I must oppose this resolution. This resolution comes on the heels of a letter some of my Democrat colleagues have written to the Attorney General urging her, should she decide to apply for an independent counsel, to request an independent counsel who will investigate the "full scope of fundraising irregularities." They argued in that letter that the Attorney General should "avoid partisanship" by instructing the independent counsel to investigate Republicans who have "skirted the spirit" of the law. I appreciate what my colleagues were doing with their letter and I appreciate what they are doing with this resolution. Their loyalty to their political party is duly noted. But, as I have said repeatedly, the appointment of an independent counsel is a serious matter and partisan proportionality should not be a consideration. Would these Senators have sent this letter had the majority not sent its letter? Would we be debating their resolution had the majority leader not turned to his resolution? I think we all know the answer to that question. Furthermore, neither their letter nor their resolution cite any congressional activities which independently warrant an independent counsel nor do they actually urge the Attorney General to appoint an independent counsel.

The resolution before the Senate expresses the Sense of the Congress that the Attorney General should do only as she pleases. But, it goes on to provide, if she does decide to initiate the independent counsel process, the Attorney General should be sure to include Members of Congress. It seems my colleagues want to have the best of both worlds. It appears from the language of their alternative resolution that they do not want to go on record as having asked for an independent counsel. But, heaven forbid, should an independent counsel be appointed, he or she should be instructed to initiate a partisan fishing expedition of Congress.

The Democrats' proposal that an independent counsel, if appointed, should have jurisdiction to investigate Members of Congress is insupportable under the independent counsel statute.

The entire purpose of the statute is to avoid the existence or appearance of a conflict of interest in Justice Department investigations. This conflict is inherent whenever an investigation involves any of the high-ranking executive branch officials enumerated in 28 U.S.C. 591(a), and may also arise—and indeed has been found by the Attorney General to have arisen—when an investigation involves other executive branch officials. 28 U.S.C. 591(c)(1). Such a conflict plainly does not, however, ordinarily exist with respect to Justice Department investigations of Members of Congress. As the Senate Report on the Independent Counsel Reauthorization Act states:

... no inherent conflict exists in Justice Department investigations and prosecutions of Members of Congress. This conflict does not exist, because the Attorney General is not part of the legislative branch and is not under the control of any Member of Congress. The Department also has a long history of successful prosecutions of Members of Congress. . . . Public perception of a conflict of interest is also not a problem. . . . Also, in 1993, the Department of Justice testified that no inherent conflict of interests in its prosecuting Members of Congress. . . .

The statute does provide that the Attorney General may conduct a preliminary investigation with respect to a Member of Congress where first "the Attorney General receives information sufficient to constitute grounds to investigate whether a Member of Congress may have violated" a Federal criminal law, and second the Attorney General "determines that it would be in the public interest" to conduct a preliminary investigation. 28 United States Code 591(c)(2). Neither of these two required findings are even suggested by the Democrats' proposed resolution, nor does it appear that they could even arguably be present here.

First, the Democrats have made no specific allegations that a Member of Congress has violated a criminal law, thus warranting further investigation. Whereas the Attorney General has for over 3 months been conducting an extensive investigation into alleged fundraising violations by members of the

Democratic National Committee [DNC] and the executive branch, I am aware of no such investigation pertaining to Members of Congress, and the Democrats' proposed resolution does not even purport to make such allegations. The independent counsel statute plainly does not authorize the appointment of an independent counsel with jurisdiction to go on an undefined fishing expedition to dig up unspecified violations by Members of Congress.

Second, I can imagine no reason—and my Democrat colleagues have suggested none—why it would be in the public interest to initiate independent counsel proceedings with respect to Members of Congress. The legislative history clearly indicates that there are two instances when independent counsel proceedings are in the public interest under section 591(c)(2). The first is where there would be a real or apparent conflict of interest for the Attorney General to investigate a Member of Congress. While we could imagine that there might be instances in which an Attorney General would have a conflict in investigating Members of Congress of the same party, only in the most extraordinary circumstance would an Attorney General have a conflict in investigating Members of the other party. In any event, we are confident that this Attorney General is fully capable of investigating Members of Congress of both parties.

The third reason for initiating independent counsel proceedings with respect to Members of Congress is when "there is a danger of disparate treatment if the case were handled by the Department of Justice," such that "a Member of Congress were unfairly subjected to a more rigorous application of criminal law than other citizens." This danger, however, clearly does not arise with respect to allegations that laws regulating the fundraising activities of public officials have been violated; if the law only applies to public officials, there is no possibility of disparate treatment between Members of Congress and private citizens. In any event, my colleagues on the other side of the aisle have not even attempted to articulate why there would be a danger of disparate treatment if the Justice Department were to investigate Members of Congress.

In closing, Attorney General Reno has appointed four independent counsels to date. It is the sense of a majority of the members of the Judiciary Committee that the need to avoid even the appearance of a conflict of interest, and thereby to ensure the public's confidence in our system of justice, requires an independent counsel in connection with the 1996 Presidential campaign. However, the record does not warrant, nor does the law permit, the appointment of an independent counsel to investigate Congress. Accordingly, I urge my colleagues to oppose Senate Joint Resolution 23.

The result was announced—yeas 58, nays 41, as follows:

[Rollcall Vote No. 33 Leg.]

YEAS—58

Abraham	Frist	Moynihan
Allard	Gorton	Murkowski
Ashcroft	Gramm	Nickles
Bennett	Grams	Roberts
Bond	Grassley	Roth
Brownback	Gregg	Santorum
Burns	Hagel	Sessions
Campbell	Hatch	Shelby
Chafee	Helms	Smith, Bob
Coats	Hutchinson	Smith, Gordon
Cochran	Hutchison	H.
Collins	Inhofe	Snowe
Coverdell	Jeffords	Specter
Craig	Kempthorne	Stevens
D'Amato	Kyl	Thomas
DeWine	Lott	Thompson
Domenici	Lugar	Thurmond
Enzi	Mack	Warner
Faircloth	McCain	Wellstone
Feingold	McConnell	

NAYS—41

Akaka	Feinstein	Leahy
Baucus	Ford	Levin
Biden	Glenn	Lieberman
Bigman	Graham	Mikulski
Boxer	Harkin	Moseley-Braun
Breaux	Hollings	Murray
Bryan	Inouye	Reed
Bumpers	Johnson	Reid
Byrd	Kennedy	Robb
Cleland	Kerrey	Rockefeller
Conrad	Kerry	Sarbanes
Daschle	Kohl	Torricelli
Dorgan	Landrieu	Wyden
Durbin	Lautenberg	

ANSWERED "PRESENT"—1

Dodd

The motion to lay on the table the joint resolution (S.J. Res. 23) was agreed to.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER (Mr. ALLARD). The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, it is my understanding that the Senate will be in a period of morning business now, is that correct?

The PRESIDING OFFICER. The Senator is correct.

MORNING BUSINESS

The PRESIDING OFFICER. There will now be a period for morning business until 3 o'clock.

CHEMICAL WEAPONS CONVENTION TREATY

Mr. KERRY. Mr. President, I rise for a few moments to speak with respect to the Chemical Weapons Convention treaty. I notice the majority leader is here. I wanted to try to get the majority leader's attention for a moment, if I can. Mr. President, I know that Senator BIDEN, who is the ranking member of the committee, has been in discussions and negotiations with a number of parties, and many of us who have been deeply involved in this issue for a long period of time are growing increasingly concerned.

I raised the subject of the Chemical Weapons Convention on the floor a couple weeks ago and signaled that a great many of us were growing sufficiently concerned that we are running out of legislative time on this important treaty that we were poised to consider

coming to the floor and exercising whatever rights we have as Senators in order to try to guarantee a debate on it. For years, we have been making an effort to pass this convention or to pass a convention that regulates chemical weapons. The United States of America has made a policy decision not to produce them. So we are watching 161 nations who signed off on this, and 68 of whom have ratified it, come together without the United States to set up the protocol that will govern the verification and regulatory process for chemical weapons and their precursors for years to come. If we are not allowed in the U.S. Senate to debate this and have a vote, we will not have performed our constitutional responsibilities.

I know the majority leader—he and I have had a number of conversations on this personally. I would like to begin now at least to ascertain publicly, and on the record, where we may be going so that we don't lose this critical time. I would like to know if the majority leader can guarantee us that we are going to have an opportunity to vote up or down on this convention, or whether we have to begin to be a little more creative.

Mr. LOTT. Mr. President, if the distinguished Senator from Massachusetts will yield, I would be glad to respond.

Mr. KERRY. I yield, without giving up my right to the floor.

The PRESIDING OFFICER. The majority leader.

Mr. LOTT. As the Senator from Massachusetts recalls, this issue was reported by the committee in the last Congress, and I made a commitment in connection with other bills that we would bring it to a vote. In fact, I believe it was scheduled for a vote, or we were moving toward a vote. But for a variety of reasons—and there is no use rehashing the history of it—the Secretary of State called and asked that we pull it back and not force it to a vote last year. We honored that request.

This year, there have been a number of discussions. The President did call and ask that we meet with his Director of the NSC, Sandy Berger, to talk about how we could bring it to a conclusion. At his request, I did meet with him, and Senator HELMS met with him. Other Senators that are interested have been talking with the President's representative. And we continue to work on that. I think some good progress has been made as a result of those meetings. Some conditionalities have been more or less agreed to. Of course, until it is final, it is never final. Some have been agreed to, some are still being discussed, and some probably will have to have amendments or votes on them when it comes to the floor of the Senate.

The Senator is absolutely right. We have made a decision to destroy our chemical weapons. That is a fact. We are doing that. He is also right that a number of countries have ratified that