

(1) to strengthen the capacity and competitiveness of HBCUs to fulfill their principal mission of equalizing educational opportunity, as described in section 301(b) of the Higher Education Act of 1965 (20 U.S.C. 1051(b));

(2) to align HBCUs with the educational and economic competitiveness priorities of the United States;

(3) to provide students enrolled at HBCUs with the highest quality educational and economic opportunities;

(4) to bolster and facilitate productive interactions between HBCUs and Federal agencies; and

(5) to encourage HBCU participation in and benefit from Federal programs, grants, contracts, and cooperative agreements.

SEC. 3. DEFINITIONS.

In this Act:

(1) APPLICABLE AGENCY.—The term “applicable agency” means any Federal agency designated by the Secretary, in accordance with section 4.

(2) EXECUTIVE DIRECTOR.—The term “Executive Director” means—

(A) the Executive Director of the White House Initiative on Historically Black Colleges and Universities, as designated by the President; or

(B) if no such Executive Director is designated, such person as the President may designate to lead the White House Initiative on Historically Black Colleges and Universities.

(3) HBCU.—The term “HBCU” means a historically Black college or university.

(4) HISTORICALLY BLACK COLLEGE OR UNIVERSITY.—The term “historically Black college or university” has the meaning given the term “part B institution” under section 322 of the Higher Education Act of 1965 (20 U.S.C. 1061).

(5) PRESIDENT’S BOARD OF ADVISORS.—The term “President’s Board of Advisors” means the President’s Board of Advisors on historically Black colleges and universities.

(6) SECRETARY.—Except as otherwise provided, the term “Secretary” means the Secretary of Education.

(7) WHITE HOUSE INITIATIVE.—The term “White House Initiative” means the White House Initiative on historically Black colleges and universities.

SEC. 4. STRENGTHENING HBCUS THROUGH FEDERAL AGENCY PLANS.

(a) DESIGNATING APPLICABLE AGENCIES.—The Secretary, in consultation with the Executive Director, shall identify those Federal agencies that regularly interact with HBCUs and designate them as applicable agencies.

(b) SUBMITTING AGENCY PLANS.—Not later than February 1 of each year, the head of each applicable agency shall submit to the Secretary and the Executive Director an annual Agency Plan describing efforts to strengthen the capacity of HBCUs to participate in relevant Federal programs and initiatives under the jurisdiction of the applicable agency.

(c) FURTHER REQUIREMENTS FOR SUBMISSION AND ACCESSIBILITY.—The head of each applicable agency shall submit each annual Agency Plan described in subsection (b) to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and Labor of the House of Representatives.

(d) AGENCY PLAN CONTENT.—Where appropriate, each Agency Plan shall, among other things—

(1) establish how the applicable agency intends to increase the capacity of HBCUs to compete effectively for grants, contracts, or cooperative agreements;

(2) identify Federal programs and initiatives under the jurisdiction of the applicable

agency where HBCUs are not well-represented;

(3) outline proposed efforts to improve HBCUs’ participation in such programs and initiatives in which they are underrepresented;

(4) describe any progress made towards advancing or achieving goals and efforts from previous Agency Plans;

(5) encourage public-sector, private-sector, and community involvement in improving the capacity of HBCUs; and

(6) meet, where relevant, any additional criteria established by the Secretary or the White House Initiative.

(e) AGENCY ENGAGEMENT.—To help fulfill the objectives of the Agency Plans, the head of each applicable agency—

(1) may provide, as appropriate, technical assistance and information to the Executive Director to enhance communication with HBCUs concerning the applicable agency’s program activities and the preparation of applications or proposals for grants, contracts, or cooperative agreements; and

(2) shall appoint a senior official to report directly to the agency head on the applicable agency’s progress under this section.

SEC. 5. PRESIDENT’S BOARD OF ADVISORS ON HBCUS.

(a) ADMINISTRATION.

(1) IN GENERAL.—There is established the President’s Board of Advisors on historically Black colleges and universities in the Department of Education or, if the President so elects, within the Executive Office of the President.

(2) FUNDING FROM ED.—Except as provided in paragraph (3), the Secretary shall provide funding and administrative support for the President’s Board of Advisors, subject to the availability of appropriations.

(3) FUNDING FROM THE EXECUTIVE OFFICE OF THE PRESIDENT.—If the President elects to locate the President’s Board of Advisors within the Executive Office of the President, the Executive Office of the President shall provide funding and administrative support for the President’s Board of Advisors, subject to the availability of appropriations.

(b) MEMBERSHIP.—The President shall appoint not more than 23 members to the President’s Board of Advisors, and the Secretary and Executive Director or their designees shall serve as ex officio members. The President shall designate one member of the President’s Board of Advisors to serve as its Chair, who shall help direct the Board’s work in coordination with the Secretary and in consultation with the Executive Director. The Chair shall also consult with the Executive Director regarding the time and location of meetings of the President’s Board of Advisors, which shall take place not less frequently than once every 6 months. Members of the President’s Board of Advisors shall serve without compensation, but shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by law. Insofar as the Federal Advisory Committee Act (5 U.S.C. App.) may apply to the Board, any functions of the President under such Act, except for those of reporting to the Congress, shall be performed by the Chair, in accordance with guidelines issued by the Administrator of General Services.

(c) MISSION AND FUNCTIONS.—The President’s Board of Advisors shall advise the President, through the White House Initiative, on all matters pertaining to strengthening the educational capacity of HBCUs. In particular, the President’s Board of Advisors shall advise the President in the following areas:

(1) Improving the identity, visibility, distinctive capabilities, and overall competitiveness of HBCUs.

(2) Engaging the philanthropic, business, government, military, homeland-security,

and education communities in a national dialogue regarding new HBCU programs and initiatives.

(3) Improving the ability of HBCUs to remain fiscally secure institutions that can assist the Nation in achieving its educational goals and in advancing the interests of all Americans.

(4) Elevating the public awareness of, and fostering appreciation of, HBCUs.

(5) Encouraging public-private investments in HBCUs.

(6) Improving government-wide strategic planning related to HBCU competitiveness to align Federal resources and provide the context for decisions about HBCU partnerships, investments, performance goals, priorities, human capital development and budget planning.

(d) REPORT.—The President’s Board of Advisors shall report annually to the President on the Board’s progress in carrying out its duties under this section.

Mr. McCONNELL. I ask unanimous consent that the motion to reconsider be considered made and laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUPPORTING THE OBSERVATION OF NATIONAL TRAFFICKING AND MODERN SLAVERY PREVENTION MONTH

Mr. McCONNELL. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. Res. 36 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The senior assistant legislative clerk read as follows:

A resolution (S. Res. 36) supporting the observation of National Trafficking and Modern Slavery Prevention Month during the period beginning on January 1, 2019, and ending on February 1, 2019, to raise awareness of, and opposition to, human trafficking and modern slavery.

There being no objection, the committee was discharged, and the Senate proceeded to consider the resolution.

Mr. McCONNELL. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motions to reconsider be considered made and laid upon the table with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 36) was agreed to.

The preamble was agreed to.

(The resolution, with its preamble, is printed in the RECORD of January 31, 2019, under “Submitted Resolutions.”)

MEASURE READ THE FIRST TIME

Mr. McCONNELL. Madam President, I understand there is a bill at the desk. I ask for its first reading.

The PRESIDING OFFICER. The clerk will read the title of the bill for the first time.

The senior assistant legislative clerk read as follows:

A bill (S. 464) to require the treatment of a lapse in appropriations as a mitigating condition when assessing financial considerations for security clearances, and for other purposes.

Mr. MCCONNELL. I ask for a second reading, and in order to place the bill on the calendar under the provisions rule XIV, I object to my own request.

The PRESIDING OFFICER. Objection is heard.

The bill will receive its second reading on the next legislative day.

ORDERS FOR WEDNESDAY,
FEBRUARY 13, 2019

Mr. MCCONNELL. Madam President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m., Wednesday, February 13; further, that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and morning business be closed; further, that following leader remarks, the Senate proceed to executive session and resume consideration of the Barr nomination; finally, that all time during recess, adjournment, morning business, and leader remarks count postclosure on the Barr nomination.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR ADJOURNMENT

Mr. MCCONNELL. Madam President, if there is no further business to come before the Senate, I ask unanimous consent that it stand adjourned under the previous order following the remarks of Senator WHITEHOUSE.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOMINATION OF WILLIAM BARR

Mr. WHITEHOUSE. Thank you, Leader.

Madam President, as I was wrapping up, I was pointing out that at some point there is likely to be a report that comes out of the special counsel's investigation, and there will be some material in that report that is properly stripped out of it before it is provided to the public.

The two things I concede are proper to strip out of it are classified national security information that could reveal sources and methods of our intelligence operations, and the second is private and personal information, particularly related to witnesses, that is not necessary to the public's understanding of the report—people's phone numbers, or email addresses, or other private information. Those are very clearly appropriate to redact from the report.

There are two other ways in which the Department of Justice could go

into the Mueller report and just gouge great tranches of material out. One would be if an assertion by the President was made of executive privilege and if, without any contest or without any formative review or court review, the Attorney General simply agreed with the assertion of executive privilege by the President.

We have seen these extreme, almost wild, unlimited assertions of executive privilege by members of the Trump administration. There has never been any discipline or proper process about it. There has never been any enforcement. So it is a wide-open field for mischief if the President decides that big chunks of the Mueller report shouldn't be disclosed to the public because he asserts executive privilege. Then Attorney General Barr says: Good enough for me. I am not going to let any of that go to the public or to Congress.

That, to me, is a problem. That door is wide open, and it is the reason I have my opposition to this particular nominee.

There is a longstanding tradition at the Department of Justice that when you are undertaking a criminal investigation and you develop, in the course of that investigation, derogatory information about people—particularly about uncharged people—you don't get to just spill that out into the public record.

The bad deed that was done by Jim Comey was to violate that Department rule and disclose derogatory investigative information about an uncharged person—specifically, Mrs. Clinton. That violated longstanding procedures and principles in the Department and kicked up a lot of criticism, including by me right at the time and since and also by Attorney General Barr. He stands, I think, in the best traditions of the Department to condemn the release of derogatory investigative information about an uncharged person.

The rule as a prosecutor is, if you are going to say it, save your pleadings. Charge the guy. Put it in the indictment. Put it in the criminal information. Then defense can fairly react. Then you are accountable to the court for what you are saying, and then there is some discipline to it, but you don't get to describe unrelated or uncharged conduct that just happens to be derogatory.

That actually continues on through the whole criminal case. You are not supposed to do it at any point. If you have something to say about the evidence in the case, you plead it in a pleading before the court; otherwise, you keep your mouth shut, and you stand on your pleadings.

The problem comes when that rule gets applied in this case, and here is the circumstance: The Mueller report comes down, and it is full of derogatory information about the President and the people around him. But because the Office of Legal Counsel, as I described earlier, has decided that you can't charge a sitting President with a

crime, now that President is an uncharged person—not because there wasn't an indictment to be brought against him, not because he didn't engage in criminal conduct, not because the government wouldn't ordinarily prosecute that case to the full extent of the law, but simply because of this little policy at the Office of Legal Counsel that you can't indict a sitting President—one that has never been tested in court and one that I think will fare badly in court if you look at the precedence of Nixon and Clinton and others.

So now, with the President an uncharged person, do you then call in this doctrine and say: Hey, all derogatory investigative information about this uncharged person is now no longer amenable to disclosure to Congress or the public.

It is a complicated situation, but it is easy to get there, and once you are there, the answer ought to be "Well, obviously no," but I couldn't get that answer. I couldn't get a straight answer. Over and over again, despite the terrific top-line assertions Mr. BARR made, when you drilled down into the weeds, you couldn't get a straight answer, and when you tried, very often it was an easy answer to give, and you couldn't get that easy, straight answer. In those cases, it was a choice between the policies and the protocols and the propriety of the Department of Justice versus the political interests of the President's.

If I can't get a good answer to a simple hearing question that properly puts the weight where it belongs to support the protocols and the procedures and the propriety of the Department of Justice, then when it is not so public and when the pressure is really on and when hard decisions have to be made, it is impossible for me to believe that he won't lean toward yielding to the President rather than defending and honoring the Department. That, for me, is enough reason to oppose this nomination.

I yield the floor.

ADJOURNMENT UNTIL 10 A.M.
TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 10 a.m. tomorrow.

Thereupon, the Senate, at 6:13 p.m., adjourned until Wednesday, February 13, 2019, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate:

FARM CREDIT ADMINISTRATION

RODNEY K. BROWN, OF CALIFORNIA, TO BE A MEMBER OF THE FARM CREDIT ADMINISTRATION BOARD, FARM CREDIT ADMINISTRATION, FOR A TERM EXPIRING OCTOBER 13, 2024, VICE JEFFERY S. HALL, TERM EXPIRED.

DEPARTMENT OF COMMERCE

IAN PAUL STEFF, OF INDIANA, TO BE ASSISTANT SECRETARY OF COMMERCE AND DIRECTOR GENERAL OF THE UNITED STATES AND FOREIGN COMMERCIAL SERVICE, VICE ELIZABETH ERIN WALSH, RESIGNED.