

110TH CONGRESS  
1ST SESSION

# H. RES. 689

Calling upon George W. Bush, President of the United States, to urge full cooperation by his former political appointees, current Administration officials, and their friends and associates with congressional investigations.

---

## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 27, 2007

Ms. HOOLEY (for herself, Mr. MURTHA, Ms. WOOLSEY, Mr. HASTINGS of Florida, Mr. DEFAZIO, Mr. LINCOLN DAVIS of Tennessee, Mr. KUCINICH, Ms. ESHOO, Mr. FILNER, Mr. HILL, Mr. ALLEN, Mrs. MCCARTHY of New York, Ms. CASTOR, Ms. HIRONO, Mr. MCGOVERN, Mr. MCINTYRE, Mr. DAVIS of Illinois, Mr. MOORE of Kansas, Mr. CLAY, Ms. MOORE of Wisconsin, Mr. NADLER, Mr. BUTTERFIELD, Mr. CARDOZA, Mr. DOGGETT, Mr. FARR, Mr. HALL of New York, Mr. HINCHEY, Ms. KAPTUR, Mr. LEWIS of Georgia, Mr. MCDERMOTT, Mr. OLVER, Mr. PASTOR, Mr. THOMPSON of California, Ms. VELÁZQUEZ, Mr. WU, Mr. BECERRA, Ms. WATSON, Mr. WEINER, Mr. BLUMENAUER, Mr. PASCRELL, Mr. ROSS, Mr. ROTHMAN, Ms. LINDA T. SÁNCHEZ of California, Mr. SPRATT, Mr. STUPAK, Mrs. TAUSCHER, Mr. THOMPSON of Mississippi, Mr. BRADY of Pennsylvania, Ms. ZOE LOFGREN of California, Mr. ABERCROMBIE, Mr. INSLEE, Mr. CAPUANO, Mr. RYAN of Ohio, Mr. HIGGINS, and Mr. TIERNEY) submitted the following resolution; which was referred to the Committee on the Judiciary

---

## RESOLUTION

Calling upon George W. Bush, President of the United States, to urge full cooperation by his former political appointees, current Administration officials, and their friends and associates with congressional investigations.

Whereas the current Administration's Department of Justice's Office of Legal Counsel has made broad assertions, unaccompanied by any authoritative judicial citations, as to the breadth and reach of presidential constitutional prerogatives that if applied to information and documents often sought by congressional committees, would stymie such inquiries;

Whereas President Bush stated in a March 20, 2007 press conference, "I will oppose any attempts to subpoena White House officials.";

Whereas the House and Senate Committees on the Judiciary made repeated and extensive efforts to obtain needed information related to the dismissal and replacement of nine U.S. Attorneys from the White House on a voluntary or cooperative basis. Despite those efforts, the White House refused to engage in a constructive dialog with the Committees regarding finding a workable compromise. After conducting numerous interviews with Department of Justice officials and reviewing documents provided by the Department of Justice, the Committees' were forced to resort to compulsory process and issued subpoenas on June 13, 2007, to the White House custodian of records, Joshua Bolten, and to two former White House officials, Sara M. Taylor and Harriet Miers, for documents and testimony;

Whereas on June 28, 2007, White House Counsel Fred F. Fielding, at the direction of President Bush, advised the Chairmen of the House and Senate Judiciary Committees that the Committees' subpoenas had been deemed by the President subject to executive privilege and that the subpoena recipients had been directed not to comply;

Whereas the Committees responded to Mr. Fielding's June 28 letter with an additional request for negotiations and compromise by the White House, asking that the White House provide a log of the factual and legal basis for claims of executive privilege and a signed statement by the President asserting such privilege;

Whereas on July 9, 2007, the White House again refused to provide the subpoenaed documents, a privilege log or a statement by the President asserting executive privilege;

Whereas on July 9, 2007, Ms. Miers's attorney informed Chairman Conyers that pursuant to the President's direction, Ms. Miers would not testify or produce documents;

Whereas on July 12, 2007, the House Judiciary Committee Subcommittee on Commercial and Administrative Law met and Subcommittee Chair Sánchez issued a ruling rejecting Ms. Miers's executive privilege claims with respect to failing to appear, to testify and to produce documents. The ruling was upheld by a 7–5 vote;

Whereas on July 19, 2007, the House Judiciary Committee Subcommittee on Commercial and Administrative Law met and Subcommittee Chair Sánchez ruled against Mr. Bolten's executive privilege claims with respect to his failure to produce documents. The ruling was upheld by a 7–3 vote;

Whereas even after the rulings by Subcommittee Chair Sánchez, the House Judiciary Committee again attempted to negotiate with the White House and with Ms. Miers, offering extended deadlines for compliance with the subpoenas. Ms. Miers and the White House again refused to comply;

Whereas on July 25, 2007, the full Judiciary Committee voted, 22–17, to issue a report to the House recommending that a resolution of contempt of Congress against Ms. Miers and Mr. Bolten be approved;

Whereas the White House indicated that it would order the United States Attorney for the District of Columbia not to present the contempt of Congress citation for grand jury consideration, preventing Congress from fulfilling its constitutional role of oversight of the Executive Branch;

Whereas the roots of Congress’ broad investigatory powers reach back to the establishment of the Constitution and which have been continually reaffirmed by the Supreme Court and, as George Mason recognized at the Constitutional Convention in 1787, Members of Congress “are not only Legislators but they possess inquisitorial power. They must meet frequently to inspect the Conduct of the public offices.”;

Whereas Woodrow Wilson wrote in his 1885 book, *Congressional Government*, “Quite as important as legislation is vigilant oversight of administration . . . The argument is not only that a discussed and interrogated administration is the only pure and efficient administration, but, more than that, that the only really self-governing people is that people which discusses and interrogates its administration.”;

Whereas in *Nixon v. Sirica* (1973), a panel of the District of Columbia Circuit rejected President Nixon’s claim that he was absolutely immune from all compulsory process whenever he asserted a formal claim of executive privilege, holding that while presidential conversations are “presumptively privileged”, the presumption could be

overcome by an appropriate showing of public need by the branch seeking access to the conversations;

Whereas in *United States v. Nixon* (1974), the Court ruled that a president’s communications with his close advisors were “presumptively privileged”, not absolutely privileged;

Whereas the Reagan Administration stated in 1984 in response to Congressional subpoenas of the Department of Justice investigative files, “These principles [of executive privilege] will not be employed to shield documents which contain evidence of criminal or unethical conduct by agency officials from proper review.”;

Whereas White House Counsel to the Clinton Administration, Lloyd Cutler, stated in a memo dated September 28, 1994, “[i]n circumstances involving communications relating to investigations of personal wrongdoing by government officials, it is our practice not to assert executive privilege, either in judicial proceedings or in congressional investigations and hearing.”; and

Whereas executive privilege is rooted in the need for confidentiality to ensure that presidential decision making is of the highest caliber, informed by honest advice and knowledge, and is limited to apply in only those instances where the Constitution provides that the President alone must make a decision: Now, therefore, be it

1       *Resolved*, That it is the Sense of the House of Rep-  
 2       resentatives that, in the interest of full disclosure con-  
 3       sistent with principles of openness in governmental oper-  
 4       ations, that—

1           (1) the House of Representatives urges the  
2           President of the United States to immediately call  
3           upon his current and former associates and ap-  
4           pointees, and the associates of those individuals, who  
5           have asserted executive privilege to avoid testifying  
6           in congressional investigations, to come forward and  
7           testify fully and truthfully before the relevant com-  
8           mittees of Congress; and  
9           (2) that the President of the United States  
10          should use all legal means at his disposal to compel  
11          people to cooperate with the investigation.

○