

**Calendar No. 1125**110<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION**S. RES. 707****[Report No. 110-522]**

Authorizing the President of the Senate to certify the facts of the failure of Joshua Bolten, as the Custodian of Records at the White House, to appear before the Committee on the Judiciary and produce documents as required by Committee subpoena.

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**IN THE SENATE OF THE UNITED STATES**

NOVEMBER 19, 2008

Mr. LEAHY, from the Committee on the Judiciary, submitted the following original resolution; which was placed on the calendar

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**RESOLUTION**

Authorizing the President of the Senate to certify the facts of the failure of Joshua Bolten, as the Custodian of Records at the White House, to appear before the Committee on the Judiciary and produce documents as required by Committee subpoena.

Whereas, since the beginning of this Congress, the Senate Judiciary Committee has conducted an investigation into the removal of United States Attorneys;

Whereas the Committee's requests for information related to its investigation, including documents and testimony from

the White House and White House personnel, were denied;

Whereas the White House has not offered any accommodation or compromise to provide the information requested that is acceptable to the Committee;

Whereas, on April 12, 2007, pursuant to its authority under rule 26 of the Standing Rules of the Senate, the Senate Committee on the Judiciary authorized issuance to the Custodian of Records at the White House, a subpoena which commands the Custodian of Records to provide the Committee with all documents in the possession, control, or custody of the White House related to the Committee's investigation;

Whereas, on June 13, 2007, the Chairman issued a subpoena pursuant to the April 12, 2007, authorization to White House Chief of Staff Joshua Bolten as the White House Custodian of Records, for documents related to the Committee's investigation, with a return date of June 28, 2007;

Whereas, on June 28, 2007, in response to subpoenas for documents issued by the Senate and House Judiciary Committees, White House Counsel Fred Fielding conveyed the President's claim of executive privilege over all information in the custody and control of the White House related to the Committee's investigation;

Whereas, based on this claim of executive privilege, Mr. Bolten refused to appear and produce documents to the Committee in compliance with the subpoena;

Whereas, on June 29, 2007, the Chairmen of the House and Senate Judiciary Committees provided the White House with an opportunity to substantiate its privilege claims by

providing the Committees with the specific factual and legal bases for its privilege claims regarding each document withheld and a privilege log to demonstrate to the Committees which documents, and which parts of those documents, are covered by any privilege that is asserted to apply and why;

Whereas the White House declined this opportunity in a July 9, 2007, letter to the Committee Chairmen from Mr. Fielding, while reiterating the privilege claim;

Whereas, on August 17, 2007, Mr. Fielding rejected the Chairman's request for a meeting with the President to work out an accommodation for the information sought by the Committee;

Whereas, on November 29, 2007, the Chairman ruled that the White House's claims of executive privilege and immunity are not legally valid to excuse current and former White House employees from appearing, testifying, and producing documents related to this investigation and directed Mr. Bolten, along with other current and former White House employees, to comply immediately with the Committee's subpoenas by producing documents and testifying;

Whereas Mr. Bolten has not complied with the Committee's subpoenas or made any offer to cure his previous non-compliance; and

Whereas the Committee's investigation is pursuant to the constitutional legislative, oversight, and investigative powers of Congress and the responsibilities of this Committee to the Senate and the American people; including the power to: (1) investigate the administration of existing laws, and obtain executive branch information in order to

consider new legislation, within the Committee's jurisdiction, including legislation related to the appointment of U.S. Attorneys; (2) expose any corruption, inefficiency, and waste within the executive branch; (3) protect the Committee's role in evaluating nominations pursuant to the Senate's constitutional responsibility to provide advice and consent; and (4) examine whether inaccurate, incomplete, or misleading testimony or other information was provided to the Committee: Now, therefore, be it

1       *Resolved*, That the President of the Senate certify the  
2 facts in connection with the failure of Joshua Bolten, as  
3 the Custodian of Records at the White House, though duly  
4 summoned, to appear and to produce documents lawfully  
5 subpoenaed to be produced before the Committee, under  
6 the seal of the United States Senate, to the United States  
7 Attorney for the District of Columbia, to the end that  
8 Joshua Bolten may be proceeded against in the manner  
9 and form provided by law.



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