

RESOLUTION OF INQUIRY REQUESTING THE PRESIDENT AND DIRECTING THE ATTORNEY GENERAL TO TRANSMIT, RESPECTIVELY, CERTAIN DOCUMENTS TO THE HOUSE OF REPRESENTATIVES RELATING TO THE REMOVAL OF FORMER FEDERAL BUREAU OF INVESTIGATION DIRECTOR JAMES COMEY

SEPTEMBER 8, 2017.—Referred to the House Calendar and ordered to be printed

Mr. GOODLATTE, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H. Res. 446]

The Committee on the Judiciary, to whom was referred the resolution (H. Res. 446) of inquiry requesting the President and directing the Attorney General to transmit, respectively, certain documents to the House of Representatives relating to the removal of former Federal Bureau of Investigation Director James Comey, having considered the same, report favorably thereon with an amendment and recommend that the resolution be agreed to.

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The amendment is as follows:

Strike all after the resolving clause and insert the following:

That the President is requested, and Attorney General of the United States is directed, to transmit, respectively (in a manner appropriate to classified information, if the President or Attorney General determines appropriate), to the House of Representatives, not later than 60 days after the date of the adoption of this resolution, copies of any document, record, audio recording, memo, correspondence, or other communication in their possessions, or any portion of any such communication, that refers or relates to the firing of James B. Comey in the following respects:

(1) Then-Attorney General Loretta Lynch directing James B. Comey to mislead the American people by stating that he should refer to the investigation into the mishandling of classified data and use of an unauthorized email server by former Secretary of State Hillary Clinton as a “matter”, rather than a criminal “investigation”.

(2) Leaks by James B. Comey to Columbia University law professor, Daniel Richman, regarding conversations had between President Donald Trump and then-FBI Director James B. Comey, and how the leaked information was purposefully released to lead to the appointment of special counsel, Robert Mueller, a longtime friend of James B. Comey.

(3) The propriety and consequence of immunity deals given to possible Hillary Clinton co-conspirators Cheryl Mills, Heather Samuelson, John Bentel, and potentially others, by the Federal Bureau of Investigation, during the criminal investigation James B. Comey led into Hillary Clinton’s misconduct.

(4) The decision by James B. Comey to usurp the authority of then-Attorney General Loretta Lynch in his unusual announcement that criminal charges would not be brought against Hillary Clinton following her unlawful use of a private email server and mishandling of classified information.

(5) James B. Comey’s knowledge and impressions of any ex-parte conversation between then-Attorney General Loretta Lynch and former President Bill Clinton on June 27, 2016, at a Phoenix airport on a private jet.

(6) James B. Comey’s knowledge of the company “Fusion GPS”, including—

(A) its creation of a “dossier” of information about Mr. Donald Trump;

(B) that dossier’s commission and dissemination in the months before and after the 2016 Presidential Election; and

(C) the intelligence sources of Fusion GPS or any person or company working for Fusion GPS or its affiliates.

(7) Any and all potential leaks originated by James B. Comey and provided to author Michael Schmidt dating back to 1993.

(8) James B. Comey’s knowledge of—

(A) the purchase of a majority stake in the company Uranium One by the company Rosatom;

(B) whether the approval of the sale was connected to any donations made to the Clinton Foundation;

(C) what role then-Secretary of State Hillary Clinton played in the approval of that sale; and

(D) whether the sale could have affected the national security of the United States of America.

(9) James B. Comey’s refusal to investigate then-Secretary of State Hillary Clinton regarding—

(A) selling access to the U.S. State Department through Clinton Foundation donations;

(B) Huma Abedin’s dual employment at the State Department and the Clinton Foundation simultaneously; or

(C) utilization of the State Department to further paid speaking opportunities for her husband.

(10) Any collusion between former FBI Director James B. Comey and special counsel Robert Mueller; including—

(A) the information James B. Comey admitted to leaking to the Columbia University law professor, being intentional such that a special counsel, his longtime friend, Robert Mueller, would be appointed to lead the investigation against the Trump administration; and

(B) any communication between Robert Mueller and James B. Comey in advance of the Senate Intelligence Committee hearing.

(11) Whether James B. Comey had any knowledge of—

(A) efforts made by any federal agency—

(i) to monitor communications of then-candidate Donald Trump;

(ii) to assess any knowledge by James B. Comey about the “unmasking” of individuals on Donald Trump’s campaign team, transition team, or both;

- (iii) to assess the role that former National Security Adviser Susan Rice played in the unmasking of these individuals; or
- (iv) to reveal the purpose served by unmasking any individual or individuals serving on the staff of then-candidate Donald Trump; or
- (B) the dissemination of unredacted information to various intelligence agencies, and any attempts to use surveillance of then-candidate Donald Trump for the purposes of damaging the credibility of his campaign, his presidency, or both.

Purpose and Summary

H. Res. 446 is a non-binding resolution of inquiry that requests that the Trump Administration provide the House of Representatives with certain documents related to the removal of former Federal Bureau of Investigation Director James Comey.

Background and Need for the Legislation

Resolutions of inquiry, if properly drafted, are given privileged parliamentary status in the House. This means that, under certain circumstances, a resolution of inquiry can be considered on the House floor even if the committee to which it was referred has not ordered the resolution reported and the majority party's leadership has not scheduled it for consideration. Clause 7 of rule XIII of the Rules of the House of Representatives requires the committee to which the resolution is referred to act on the resolution within 14 legislative days, or a motion to discharge the committee from consideration is considered privileged on the floor of the House. In calculating the days available for committee consideration, the day of introduction and the day of discharge are not counted.¹

Under the Rules and precedents of the House, a resolution of inquiry is a means by which the House may request information from the President or the head of one of the executive departments. According to *Deschler's Precedents*, it is a "simple resolution making a direct request or demand of the President or the head of an executive department to furnish the House of Representatives with specific factual information in the possession of the executive branch."² Such resolutions must ask for facts, documents, or specific information; they may not be used to request an opinion or require an investigation.³ Resolutions of inquiry are not akin to subpoenas, they have no legal force, and thus compliance by the Executive Branch with the House's request for information is purely voluntary.

According to a study conducted by the Congressional Research Service (CRS), between 1947 and 2011, 290 resolutions of inquiry were introduced in the House.⁴ Within this period, CRS found that "two periods in particular, 1971–1975 and 2003–2006, saw the highest levels of activity on resolutions of inquiry" and that the "Committees on Armed Services, Foreign Affairs, and the Judiciary

¹ Wm. Holmes Brown, et al., *House Practice: A Guide to the Rules, Precedents, and Procedures of the House* ch. 49, § 6, p. 834 (2011).

² 7 *Deschler's Precedents of the United States House of Representatives*, H. Doc. No. 94-661, 94th Cong., 2d Sess., ch. 24, § 8.

³ A resolution that seeks more than factual information does not enjoy privileged status. Brown, *supra* note 1, at 833–34.

⁴ Christopher M. Davis, Congressional Research Service, *Resolutions of Inquiry: An Analysis of Their Use in the House, 1947–2011* at i (2012).

have received the largest share of references.”⁵ CRS further found that “in recent Congresses, such resolutions have overwhelmingly become a tool of the minority party in the House.”⁶

A Committee has a number of choices after a resolution of inquiry is referred to it. It may vote on the resolution up or down as is or it may amend it, and it may report the resolution favorably, unfavorably, or with no recommendation.

H. Res. 446, as amended in committee, seeks information regarding the removal of James B. Comey as Director of the Federal Bureau of Investigation, including:

(1) Then-Attorney General Loretta Lynch directing James B. Comey to mislead the American people by stating that he should refer to the investigation into the mishandling of classified data and use of an unauthorized email server by former Secretary of State Hillary Clinton as a “matter,” rather than a criminal “investigation.”

(2) Leaks by James B. Comey to Columbia University law professor, Daniel Richman, regarding conversations had between President Donald Trump and then-FBI Director James B. Comey, and how the leaked information was purposefully released to lead to the appointment of special counsel, Robert Mueller, a longtime friend of James B. Comey.

(3) The propriety and consequence of immunity deals given to possible Hillary Clinton co-conspirators by the Federal Bureau of Investigation, during the criminal investigation into Hillary Clinton’s misconduct.

(4) The decision by James B. Comey to usurp the authority of then-Attorney General Loretta Lynch in his unusual announcement that criminal charges would not be brought against Hillary Clinton following her unlawful use of a private email server and mishandling of classified information.

(5) James B. Comey’s knowledge and impressions of any ex-parte conversation between then-Attorney General Loretta Lynch and former President Bill Clinton on June 27, 2016, at a Phoenix airport on a private jet.

(6) James B. Comey’s knowledge of the company “Fusion GPS,” including its creation of a “dossier” of information about Mr. Donald Trump.

(7) James B. Comey’s refusal to investigate then-Secretary of State Hillary Clinton regarding selling access to the U.S. State Department through Clinton Foundation donations and utilization of the State Department to further paid speaking opportunities for her husband.

Hearings

The Committee on the Judiciary held no hearings on H. Res. 446.

Committee Consideration

On July 26, 2017, the Committee met in open session and ordered H. Res. 446 favorably reported by a roll call vote of 15–13, a quorum being present.

⁵*Id.*

⁶*Id.*

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following roll call votes occurred during the Committee's consideration of H. Res. 446.

1. Motion to table the appeal of the ruling of the chair. Approved 17 to 9.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman	X	.....	.....
Mr. Sensenbrenner, Jr. (WI) .....	.....	.....	.....
Mr. Smith (TX) .....	.....	.....	.....
Mr. Chabot (OH)	X	.....	.....
Mr. Issa (CA) .....	.....	.....	.....
Mr. King (IA)	X	.....	.....
Mr. Franks (AZ)	X	.....	.....
Mr. Gohmert (TX)	X	.....	.....
Mr. Jordan (OH)	X	.....	.....
Mr. Poe (TX)	X	.....	.....
Mr. Marino (PA)	X	.....	.....
Mr. Gowdy (SC) .....	.....	.....	.....
Mr. Labrador (ID)	X	.....	.....
Mr. Farenthold (TX)	X	.....	.....
Mr. Collins (GA) .....	.....	.....	.....
Mr. DeSantis (FL)	X	.....	.....
Mr. Buck (CO) .....	.....	.....	.....
Mr. Ratcliffe (TX)	X	.....	.....
Ms. Roby (AL) .....	.....	.....	.....
Mr. Gaetz (FL)	X	.....	.....
Mr. Johnson (LA)	X	.....	.....
Mr. Biggs (AZ)	X	.....	.....
Mr. Rutherford (FL)	X	.....	.....
Ms. Handel (GA)	X	.....	.....
Mr. Conyers, Jr. (MI), Ranking Member .....	.....	X	.....
Mr. Nadler (NY) .....	.....	X	.....
Ms. Lofgren (CA) .....	.....	X	.....
Ms. Jackson Lee (TX) .....	.....	X	.....
Mr. Cohen (TN) .....	.....	X	.....
Mr. Johnson (GA) .....	.....	X	.....
Mr. Deutch (FL) .....	.....	X	.....
Mr. Gutierrez (IL) .....	.....	.....	.....
Ms. Bass (CA) .....	.....	.....	.....
Mr. Richmond (LA) .....	.....	.....	.....
Mr. Jeffries (NY) .....	.....	.....	.....
Mr. Cicilline (RI) .....	.....	.....	.....
Mr. Swalwell (CA) .....	.....	.....	.....
Mr. Lieu (CA) .....	.....	.....	.....
Mr. Raskin (MD) .....	.....	.....	.....
Ms. Jayapal (WA) .....	.....	X	.....
Mr. Schneider (IL) .....	.....	X	.....

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Total	17	9	.....

2. A substitute amendment, offered by Mr. Gaetz, that enumerates additional topics of inquiry relating to the 2016 presidential election; former Federal Bureau of Investigation Director James Comey; former Secretary of State Hillary Clinton and her associates; and alleged intelligence-gathering activities by former President Barack Obama's administration officials. Approved 16 to 13.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman	X	.....	.....
Mr. Sensenbrenner, Jr. (WI) .....	.....	.....	.....
Mr. Smith (TX)	X	.....	.....
Mr. Chabot (OH)	X	.....	.....
Mr. Issa (CA) .....	.....	.....	.....
Mr. King (IA)	X	.....	.....
Mr. Franks (AZ)	X	.....	.....
Mr. Gohmert (TX)	X	.....	.....
Mr. Jordan (OH)	X	.....	.....
Mr. Poe (TX) .....	.....	.....	.....
Mr. Marino (PA)	X	.....	.....
Mr. Gowdy (SC)	X	.....	.....
Mr. Labrador (ID)	X	.....	.....
Mr. Farenthold (TX)	X	.....	.....
Mr. Collins (GA) .....	.....	.....	.....
Mr. DeSantis (FL) .....	.....	.....	.....
Mr. Buck (CO) .....	.....	.....	.....
Mr. Ratcliffe (TX) .....	.....	.....	.....
Ms. Roby (AL) .....	.....	.....	.....
Mr. Gaetz (FL)	X	.....	.....
Mr. Johnson (LA)	X	.....	.....
Mr. Biggs (AZ)	X	.....	.....
Mr. Rutherford (FL)	X	.....	.....
Ms. Handel (GA)	X	.....	.....
Mr. Conyers, Jr. (MI), Ranking Member .....	.....	X	.....
Mr. Nadler (NY) .....	.....	X	.....
Ms. Lofgren (CA) .....	.....	X	.....
Ms. Jackson Lee (TX) .....	.....	X	.....
Mr. Cohen (TN) .....	.....	.....	.....
Mr. Johnson (GA) .....	.....	X	.....
Mr. Deutch (FL) .....	.....	X	.....
Mr. Gutierrez (IL) .....	.....	X	.....
Ms. Bass (CA) .....	.....	X	.....
Mr. Richmond (LA) .....	.....	.....	.....
Mr. Jeffries (NY) .....	.....	.....	.....
Mr. Cicilline (RI) .....	.....	X	.....
Mr. Swalwell (CA) .....	.....	X	.....
Mr. Lieu (CA) .....	.....	.....	.....

ROLLCALL NO. 2—Continued

	Ayes	Nays	Present
Mr. Raskin (MD) .....	.....	X	.....
Ms. Jayapal (WA) .....	.....	X	.....
Mr. Schneider (IL) .....	.....	X	.....
Total	16	13	.....

3. Motion to report H. Res. 446 favorably to the House. Approved 15 to 13.

ROLLCALL NO. 3

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman	X	.....	.....
Mr. Sensenbrenner, Jr. (WI) .....	.....	.....	.....
Mr. Smith (TX)	X	.....	.....
Mr. Chabot (OH)	X	.....	.....
Mr. Issa (CA) .....	.....	.....	.....
Mr. King (IA) .....	.....	.....	.....
Mr. Franks (AZ)	X	.....	.....
Mr. Gohmert (TX)	X	.....	.....
Mr. Jordan (OH)	X	.....	.....
Mr. Poe (TX) .....	.....	.....	.....
Mr. Marino (PA)	X	.....	.....
Mr. Gowdy (SC)	X	.....	.....
Mr. Labrador (ID)	X	.....	.....
Mr. Farenthold (TX)	X	.....	.....
Mr. Collins (GA) .....	.....	.....	.....
Mr. DeSantis (FL) .....	.....	.....	.....
Mr. Buck (CO) .....	.....	.....	.....
Mr. Ratcliffe (TX) .....	.....	.....	.....
Ms. Roby (AL) .....	.....	.....	.....
Mr. Gaetz (FL)	X	.....	.....
Mr. Johnson (LA)	X	.....	.....
Mr. Biggs (AZ)	X	.....	.....
Mr. Rutherford (FL)	X	.....	.....
Ms. Handel (GA)	X	.....	.....
Mr. Conyers, Jr. (MI), Ranking Member .....	.....	X	.....
Mr. Nadler (NY) .....	.....	X	.....
Ms. Lofgren (CA) .....	.....	X	.....
Ms. Jackson Lee (TX) .....	.....	X	.....
Mr. Cohen (TN) .....	.....	.....	.....
Mr. Johnson (GA) .....	.....	X	.....
Mr. Deutch (FL) .....	.....	X	.....
Mr. Gutierrez (IL) .....	.....	X	.....
Ms. Bass (CA) .....	.....	X	.....
Mr. Richmond (LA) .....	.....	.....	.....
Mr. Jeffries (NY) .....	.....	.....	.....
Mr. Cicilline (RI) .....	.....	X	.....
Mr. Swalwell (CA) .....	.....	X	.....
Mr. Lieu (CA) .....	.....	.....	.....

ROLLCALL NO. 3—Continued

	Ayes	Nays	Present
Mr. Raskin (MD) .....	.....	X	.....
Ms. Jayapal (WA) .....	.....	X	.....
Mr. Schneider (IL) .....	.....	X	.....
Total	15	13	.....

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Committee Cost Estimate

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the Committee estimates that implementing this non-binding resolution would not result in any significant costs. The Congressional Budget Office did not provide a cost estimate for the resolution.

Duplication of Federal Programs

No provision of H. Res. 446 establishes or reauthorizes a program of the Federal government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

Disclosure of Directed Rule Makings

The Committee estimates that H. Res. 446 specifically directs to be completed no specific rule makings within the meaning of 5 U.S.C. § 551.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H. Res. 446 requests certain documents from the Trump Administration related to the dismissal of former Federal Bureau of Investigation Director James Comey.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H. Res. 446 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI.

Section-by-Section Analysis

The following discussion describes the resolution as reported by the Committee.

H. Res. 446, a non-binding resolution of inquiry, requests that the President and the Attorney General of the United States transmit certain documents and communications to the House of Representatives related to the removal of James B. Comey from his position as the director of the Federal Bureau of Investigation.

Dissenting Views

H. Res. 446, as introduced by Representatives Pramila Jayapal (D-WA) and David Cicilline (D-RI), presented the Majority with an opportunity to address events that ordinarily would command the attention of this Committee—among them President Donald Trump’s repeated efforts to undermine an ongoing criminal investigation, his direct attacks on the leadership of the Department of Justice, and the seemingly pick-and-choose application of the Attorney General’s recusal from matters related to the presidential campaigns.

Rather than debate the resolution on the merits, however, the Majority has shown us where their priorities lie: they would rather chase the ghost of Hillary Clinton’s emails than face the fact of widespread dysfunction at the White House and the Department of Justice.

On July 24, 2017, President Trump took to Twitter to ask: “So why aren’t the Committees and investigators, and of course our beleaguered A.G., looking into Crooked Hillarys [sic] crimes & Russia relations?”¹ We took this tweet initially as just another attack on the Attorney General by the President—a troubling suggestion that the Department of Justice should investigate the President’s political rivals, but nothing unusual for the Trump era.

The Majority, it seems, read the message differently. On the same day that the President urged Congress to investigate Hillary Clinton, staff for Representative Matthew Gaetz (R-FL) asked for help identifying “Clinton/Obama/election scandals” from “r/The_Donald,” an online forum noted for unfounded conspiracy theories, racist tendencies, and rabid support for President Trump.² The suggestions his staff received formed the basis of the Gaetz Amendment to H. Res. 446, which replaced the content of the original resolution[,] and which the Majority embraced unanimously.

Our Committee has an obligation to safeguard the Department of Justice from the chaos unleashed by the Trump Administration. Instead, the Majority seeks to legitimize the views of the online

¹ President Donald Trump (@realDonaldTrump), Twitter, July 24, 2017, 8:49 AM.

² Ashley Feinberg, *A GOP Staffer Crowdsourced an Anti-Clinton Resolution from Reddit*, WIRED, July 28, 2017.

forum that helped promote “Pizzagate”³ and exploit the murder of Seth Rich.⁴ As amended, the resolution is little more than a compilation of right-wing conspiracy theories and represents the Majority’s abdication of our responsibilities. We dissent.

I. THE GAETZ AMENDMENT SURRENDERS COMMITTEE PROCESS TO AN ALT-RIGHT ONLINE FORUM.

The Gaetz Amendment began with a post to r/The_Donald, an online bulletin board hosted by Reddit and dedicated to near-fanatical devotion to President Trump.⁵ On July 24, 2017, an employee of Representative Gaetz solicited the community’s help:

I work for Congress and have been asked to come up with a list of Clinton/Obama/election scandals for my boss ASAP (within the next few hours). . . . I know about phony “Russia” hack of DNC (Seth Rich), uranium sales, Comey miscreancy, but I’m sure there’s a lot I’m missing.⁶

The member of Representative Gaetz’s staff to whom this message was later attributed has a history of frequenting r/The_Donald and sharing his opinions on “the cuck-filled Senate,” “Barry o’Islama,” and the “raping savages” seeking refuge from the Syrian civil war.⁷

These views are right at home on r/The_Donald. Although the forum officially condemns anti-Semitism and racism, it is a frequent host to racist, anti-Semitic, Islamophobic, and misogynistic commentary.⁸ Analysts have described r/The_Donald as a “hate speech forum”⁹ and a “notoriously fetid troll swamp.”¹⁰ Users “respond to accusations of bigotry with defiant claims of persecution at the hands of critics. It is an article of faith among posters that anti-racists are the real bigots, feminists are the actual sexists, and progressive politics are, in effect, regressive.”¹¹ One statistical analysis of the site found that its membership overlaps significantly with a number of “hate-based subreddits” that openly promote racist and anti-Semitic views.¹²

The subreddit is also an incubator for various right-wing conspiracy theories. More than 10,000 posts on r/The_Donald are devoted to Seth Rich, a young staffer for the Democratic National Committee (DNC) who was killed in an attempted robbery last summer.¹³ Commenters on the r/The_Donald claim, without evi-

³Celia Kang, *Fake News Onslaught Targets Pizzeria as Nest of Child-Trafficking*, N.Y. TIMES, Nov. 21, 2017.

⁴Emma Gray Ellis, *The Seth Rich Conspiracy Theory: A Tale of Two Filter Bubbles*, WIRED, May 18, 2017.

⁵*The origin of the specious*, THE ECONOMIST, July 4, 2017. For example, users of r/The_Donald frequently refer to President Trump as “God emperor.”

⁶PEEDS NEEDED ASAP!! *SERIOUS REQUEST*, submitted by Devinm666, Reddit, July 24, 2017 (originally posted at https://www.reddit.com/r/The_Donald/comments/6pbupw/pedes-needed-asap-serious-request/).

⁷Ashley Feinberg, *A GOP Staffer Crowdsourced an Anti-Clinton Resolution from Reddit*, WIRED, July 28, 2017.

⁸Caitlin Dewey, *The people running this Trump fan club also promote eugenics and call Muslims ‘animals.’* WASH. POST, July 20, 2016; see also Trevor Martin, *Dissecting Trump’s Most Rabid Online Following*, FIVE THIRTY EIGHT.COM, Mar. 23, 2017.

⁹Ben Mathis-Lilley, *Meanwhile, Donald Trump Did a Q&A Wednesday Night on a Hate Speech Forum*, SLATE, July 28, 2016.

¹⁰Tiffany Kaitlyn, *The ultimate conspiracy: a conspiracy against Reddit’s conspiracy community*, THE VERGE, Jan. 11, 2017.

¹¹John Herrman, *Donald Trump Finds Support in Reddit’s Unruly Corners*, N.Y. TIMES, Apr. 8, 2016.

¹²Trevor Martin, *Dissecting Trump’s Most Rabid Online Following*, FIVE THIRTY EIGHT.COM, Mar. 23, 2017.

¹³*The origin of the specious*, THE ECONOMIST, July 4, 2017.

dence, that Mr. Rich was connected to the leak of emails stolen from the DNC last year and that he was murdered in a plot to cover up his knowledge of the crime.¹⁴ In a public statement, Mr. Rich’s parents called these “discredited conspiracy theories . . . baseless [and] unspeakably cruel.”¹⁵ The intelligence community stands by its unanimous opinion that the Russian government was responsible for the theft of DNC emails during the presidential campaign.¹⁶

The forum also promoted the “Pizzagate” conspiracy, which alleged that close associates of Hillary Clinton run an underground child exploitation ring out of a pizza restaurant in northwest Washington, DC.¹⁷ The relentless online discussion of this theory, promoted and amplified by r/The_Donald, had dangerous, real-world consequences. On December 4, 2016, a man entered the crowded restaurant and fired three shots from a rifle before finding “no evidence that underage children were being harbored in the restaurant” and surrendering to police.¹⁸

The Gaetz Amendment appears to be based almost entirely on the suggestions of this collective of conspiracy theorists—and it shows. One user, responding to the post left by Representative Gaetz’s office, offered a list of ideas that Representative Gaetz appears to have used in its entirety:

Are you freaking kidding me? Clinton state department pay for play which funded the Clinton Foundation which bankrolled Clinton’s campaign, susan rice [sic] unmasking, lynch [sic] obstruction, falsifying/manufacturing evidence for FISA warrants on the Trump Tower, Fusion GPS working with the Russian government to manufacture the . . . dossier, the . . . dossier and how it was spread in general, Christ that’s just off the top of my head.¹⁹

The Gaetz Amendment also asks for information about other largely discredited schemes: Hillary Clinton’s supposed profit from the sale of uranium deposits to a Russian company, “immunity deals” given to “possible Hillary Clinton co-conspirators,” and Federal Bureau of Investigation (FBI) Director James Comey’s “leaks” to *New York Times* reporter Michael Schmidt “as far back as 1993”—when Mr. Schmidt would have been in elementary school.

At least one member of Representative Gaetz’s staff seemed pleased when the Majority surrendered Committee process to the curators of these conspiracy theories. While the markup was still in session, in what we assume is a reference to Chairman Goodlatte and others leading the Republican conference, he posted:

¹⁴ David Weigel, *The Seth Rich conspiracy shows how fake news still works*, WASH. POST, May 20, 2017; Eugene Kiely, *Gingrich Spreads Conspiracy Theory*, FACTCHECK.ORG, May 22, 2017; Colleen Shalby, *How Seth Rich’s death became an Internet conspiracy theory*, L.A. TIMES, May 24, 2017.

¹⁵ Mary Rich & Joel Rich, *We’re Seth Rich’s parents. Stop politicizing our son’s murder.*, WASH. POST, Mar. 23, 2017.

¹⁶ *Assessing Russian Activities and Intentions in Recent US Elections*, Office of the Director of National Intelligence, Jan. 6, 2017.

¹⁷ Abby Ohlheiser, *Fearing yet another witch hunt, Reddit bans “Pizzagate,”* WASH. POST, Nov. 24, 2016; see also Kevin Ducey, *No, Andrew Bogut’s knee injury is not an anti-Pizzagate conspiracy*, SPORTS ILLUSTRATED, Dec. 30, 2016.

¹⁸ Spence Hsu, *Comet Pizza gunman pleads guilty to federal and local charges*, WASH. POST, Mar. 24, 2017.

¹⁹ Ashley Feinberg, *A GOP Staffer Crowdsourced an Anti-Clinton Resolution from Reddit*, WIRED, July 28, 2017.

“Cucks abound, and they have not been defending the president. Hopefully that stops now.”²⁰

II. ARGUMENTS IN FAVOR OF THE GAETZ AMENDMENT ECHO
PRESIDENT TRUMP’S OWN OBSTRUCTIONIST TALKING POINTS.

The Majority would prefer to mimic President Trump’s favorite talking points rather than conduct any meaningful oversight of his Administration. During debate of H. Res. 446, they took a resolution designed to hold the President accountable to the Committee and used its markup as a forum to spread the President’s mistruths and misdirection.

President Trump has a record of deflecting criticism by attacking public officials he believes to be his enemies. For example, he asks on Twitter: “why isn’t the A.G. or Special Council [sic] looking at the many Hillary Clinton or Comey crimes. 33,000 emails deleted?”²¹ He tries to equate Hillary Clinton’s alleged and largely unsubstantiated connections to the Russian government to his own: “What about all of the Clinton ties to Russia, including Podesta Company, Uranium deal, Russian Reset [sic], big dollar speeches etc.”²² Again and again, he attempts to pivot the conversation away from his own conduct and towards Hillary Clinton: “My son Donald openly gave his e-mails to the media & authorities whereas Crooked Hillary Clinton deleted (& acid washed) her 33,000 e-mails!”²³

We have come to expect this kind of rhetoric from President Trump. New to us, however, is the Majority’s decision to simply repeat these fact-free talking points as their own.

For example, President Trump prefers that the Department of Justice look at “the many Hillary Clinton or Comey crimes” instead of his campaign or his family finances—and now, so does our Majority. At the markup, Representative Gaetz explained that his amendment was designed to investigate “the real crimes, harmful lies, and the undermining of American security by the prior administration.”²⁴ Chairman Goodlatte also indicated his support for the Gaetz Amendment using similar language: “I share my colleague’s desire to determine the extent to which laws were broken during the election by individuals named in this amendment.”²⁵

President Trump hopes that the Committee will examine “all of the Clinton ties to Russia,” like the “Uranium deal,” instead of conducting oversight of his Administration. The Majority seems happy to oblige. At markup, Representative Jim Jordan (R–OH) asked: “We have got all these investigations about Putin’s government trying to influence our election. How about the Obama administration’s influence on our election?”²⁶ Representative Gaetz made his

²⁰ Ashley Feinberg, *A GOP Staffer Crowdsourced an Anti-Clinton Resolution from Reddit*, WIRED, July 28, 2017.

²¹ President Donald Trump (@realDonaldTrump), Twitter, July 24, 2017, 7:44 AM.

²² *Id.*, July 24, 2017, 7:47 AM.

²³ *Id.*, July 24, 2017, 8:00 AM. Donald Trump, Jr. made one email exchange available to the public. He did so minutes before the *New York Times* planned to do the same. The exchange in question documents top Trump campaign advisors agreeing to meet with Russian officials in order to obtain information that might harm the Clinton campaign. See Jo Becker, et al., *Russian Dirt on Clinton? ‘I Love It,’ Donald Trump, Jr. Said*, N.Y. TIMES, July 11, 2017.

²⁴ Unofficial Tr. of Markup of H.R. 391, the “Asylum Reform and Border Protection Act”; H. Res. 446, the “Resolution of Inquiry,” before the H. Comm. on the Judiciary, 115th Cong. (July 26, 2017) (statement of Rep. Matthew Gaetz) [hereinafter Markup Tr.].

²⁵ *Id.* (statement of Chairman Bob Goodlatte).

²⁶ *Id.* (statement of Rep. Jim Jordan).

priorities clear as well: “Cash was flowing to the Clinton Foundation while the Uranium One deal was at work. That is the real collusion that threatens American’s security.”²⁷

As the Special Counsel’s investigation bears down on his Administration, President Trump returns often to a favorite rallying cry: “33,000 e-mails!” The Majority has signaled its willingness to help on this front as well. Representative Steve King (R–IA) stated at the markup that the ongoing investigation into the President’s campaign is a “sham investigation” and would rather we focus on “at least 30,000 emails, crushed hard drives, [and] bleach bit.”²⁸

To the extent that the issues raised by the President and the Majority have any basis in reality, they have already been thoroughly investigated by the Department of Justice and the FBI.²⁹ Hillary Clinton’s actions and those of other private citizens have nothing to do with our obligation to conduct oversight of the Trump Administration. We cannot agree with the Majority’s decision to prioritize yet another investigation of Hillary Clinton over matters that are squarely within the Committee’s jurisdiction and which threaten the integrity of the Department of Justice.

Nevertheless, we would be less concerned if the Majority wanted to chase Hillary Clinton conspiracy theories *in addition* to conducting meaningful oversight of the Trump Administration. At markup, Representative Jayapal made this point clear:

My colleagues are as entitled to their oversight prerogatives as I am to mine, so if my colleagues are willing to add these points that are in your amendment to our resolution, rather than substitute your questions for ours, then I will withdraw my point of order, and I will look forward to their support for the underlying resolution.³⁰

Representative Gaetz refused. Instead he chose to let the Special Counsel “review the conduct of the Trump Administration,” and let the Committee “ensure that the real criminals are held accountable for their conduct that has undermined the country.”³¹

It is worth noting that this Trump-like fixation with Hillary Clinton did not stop when the markup ended. One day later, the Majority sent a letter to the Department of Justice demanding the appointment of a new special counsel to investigate each of the items listed in the Gaetz Amendment.³²

We find this request remarkable. In their objection to conducting oversight of the Trump Administration, the Majority found “no salient reason for this committee to become the sixth entity that is using taxpayer dollars to investigate the Trump campaign’s connections . . . to the Russian government.”³³ The Majority can balk at its oversight responsibilities because investigations cost too much, or they can ask the government to spend millions of additional dol-

²⁷ *Id.* (statement of Rep. Matthew Gaetz).

²⁸ *Id.* (statement of Rep. Steve King).

²⁹ *See, e.g.*, David A. Graham, *But What About Hillary Clinton?*, THE ATLANTIC, July 24, 2017; Glenn Kessler & Michelle Ye Hee Lee, *26 hours, 29 Trumpian false or misleading claims*, WASH. POST, July 26, 2017.

³⁰ Markup Tr., *supra* note 24 (statement of Rep. Pramila Jayapal).

³¹ *Id.* (statement of Rep. Matthew Gaetz).

³² Letter from Chairman Bob Goodlatte, et al., H. Comm. on the Judiciary, to U.S. Attorney General Jeff Sessions & Deputy Attorney General Rod J. Rosenstein, July 27, 2017.

³³ Markup Tr. (statement of Chairman Bob Goodlatte).

lars to vindicate the former Secretary of State yet again,³⁴ but they probably should not do both at the same time.

III. THE TRUMP ADMINISTRATION HAS PUSHED THE DEPARTMENT OF JUSTICE INTO CRISIS, BUT THE MAJORITY REFUSES TO ACKNOWLEDGE THE PROBLEM.

President Trump has expressed outright contempt for the leadership of the Department of Justice. He fired acting Attorney General Sally Yates for failing to defend his unconstitutional immigration ban.³⁵ He has attacked the credibility of Attorney General Jeff Sessions, Deputy Attorney General Rod Rosenstein, acting FBI Director Andrew McCabe, and Special Counsel Robert Mueller.³⁶ He complained that the Attorney General’s recusal is “extremely unfair.”³⁷ He warned the Special Counsel that any investigation into the Trump family’s finances would be “a violation” and cross “a red line.”³⁸ He claimed for himself the “complete power to pardon” anybody caught up in the Special Counsel’s investigation—including, presumably, himself.³⁹ He lambasted Attorney General Sessions for failing to investigate his political opponents⁴⁰ and interfered with Department’s ability to pursue and develop its litigation strategy independently.⁴¹ As the President threatens to fire the Attorney General, the Deputy Attorney General, and the Special Counsel in turn, the public debates the proper line of succession at the Department of Justice.⁴²

The President often engages in these attacks without warning, but that does not mean his disparagement of Department officials is merely impulsive. For example, on July 26, 2017, federal investigators executed a search warrant at the home of former Trump campaign manager Paul J. Manafort.⁴³ Hours later, President Trump took to Twitter to rail against both the Attorney General and the acting Director of the FBI: “Why didn’t A.G. Sessions replace Acting FBI Director Andrew McCabe, a Comey friend who was in charge of [the] Clinton investigation . . .”⁴⁴ He added: “Drain the Swamp!”⁴⁵ Either the raid and the tweets are unrelated, and the President was merely undermining the leadership of

³⁴ See Glenn Kessler, *Have Republicans really spent \$7 million on the Benghazi Committee*, WASH. POST, MAY 17, 2016. See also Bipartisan Report, *Review of the Terrorist Attacks on U.S. Facilities in Benghazi, Libya, September 11–12, 2012*, S. Select Comm. on Intelligence, Jan. 15, 2014; Bipartisan Report, *Investigative Report on the Terrorist Attacks on U.S. Facilities in Benghazi, Libya, September 11–12, 2012*, H. Permanent Select Comm. on Intelligence; *Interim Progress Report for the Members of the House Republican Conference on the Events Surrounding the September 11, 2012, Terrorist Attacks in Benghazi, Libya*, Chairman Howard P. “Buck” McKeon, H. Comm. on Armed Services, et al., Apr. 23, 2013.

³⁵ Michael D. Shear, et al., *Trump Fires Acting Attorney General Who Defied Him*, N.Y. TIMES, Jan. 30, 2017.

³⁶ *Excerpts from the Times’s Interview with Trump*, N.Y. TIMES, July 19, 2017.

³⁷ *Id.*

³⁸ *Id.*

³⁹ President Donald Trump (@realDonaldTrump), Twitter, July 22, 2017, 7:35 AM.

⁴⁰ President Donald Trump (@realDonaldTrump), Twitter, July 24, 2017, 8:49 AM.

⁴¹ See e.g., Philip Rucker & Ellen Nakashima, *Trump asked Sessions about closing case against Arpaio, an ally since “birtherism,”* WASH. POST, Aug. 26, 2017.

⁴² See, e.g., Philip Bump, *How Rick Perry could fire Robert Mueller*, WASH. POST, July 27, 2017; Laura Jarrett, *Who’s in charge of the Justice Department if Sessions goes?*, CNN, July 26, 2017; Louis Nelson, *Sally Yates and Preet Bharara hammer Trump for criticizing Sessions*, POLITICO, July 20, 2017.

⁴³ Michael S. Schmidt & Adam Goldman, *Manafort’s Home Searched as Part of Mueller Inquiry*, N.Y. TIMES, Aug. 9, 2017.

⁴⁴ President Donald Trump (@realDonaldTrump), Twitter, July 26, 2017, 9:48 AM. Of course, as the Chairman points out, it is ordinarily “within the President’s constitutional authority to fire a subordinate.” Markup Tr. (statement of Chairman Bob Goodlatte).

⁴⁵ President Donald Trump (@realDonaldTrump), Twitter, July 26, 2017, 9:56 AM.

the Department again, or they are directly connected, and the President was venting his disapproval of an ongoing criminal investigation. Neither case should be acceptable to this Committee.

This state of affairs is not normal in a functioning government. It is profoundly unfair to the career staff of the Department of Justice and the FBI and it deserves immediate consideration by this Committee. We, from our position in the Minority, have attempted to do something about it.

Together, we have sent more than a dozen letters to the White House and the Department of Justice, asking for information related to a range of matters that fall squarely within our jurisdiction—including the Attorney General’s participation in the firing of former FBI Director James Comey,⁴⁶ the scope of executive privilege,⁴⁷ the application of the Foreign Emoluments Clause of the Constitution to President Trump’s business holdings,⁴⁸ and the preservation of documents related to the pending Russia investigation.⁴⁹

We have also sent four separate letters urging the Chairman to hold hearings with the leadership of the Department of Justice and the FBI.⁵⁰

We have received no meaningful response from the Administration and no direct response from Chairman Goodlatte.

As introduced, H. Res. 446 was designed to help us make sense of the growing crisis at the Department of Justice by obtaining information about the events that appear to have caused President Trump to lose faith in its leadership. The Majority refuses to hold oversight hearings, or even allow us the courtesy of an up-or-down vote on this resolution of inquiry. At markup, Representative Jamie Raskin (D–MD) asked Chairman Goodlatte if “we all agree the special counsel should not be dismissed by the President of the United States.”⁵¹ The Chairman demurred: “I think that is a separate issue.”⁵² The President’s repeated threat to fire the special counsel is not a separate issue. It is part of the crisis that Representatives Jayapal and [Rep.] Cicilline had hoped to force the Committee to examine before the Administration does even more damage to the integrity of the Department of Justice.

Instead, the Majority would rather we focus on the much-litigated, never-substantiated “crimes” of Hillary Clinton. As President Trump would say: Sad.

IV. THE MAJORITY HAS NO EXCUSE FOR FAILING TO CONDUCT OVERSIGHT OF THE TRUMP ADMINISTRATION.

Before the Majority gutted H. Res. 446 and reshaped it around a long list of largely unsubstantiated conspiracy theories, Chairman Goodlatte voiced his disapproval of our tactics:

⁴⁶ Letter from Ranking Member John Conyers, Jr., et al., to U.S. Attorney General Jeff Sessions, June 12, 2017.

⁴⁷ Letter from Ranking Member John Conyers, Jr., et al., to White House Counsel Donald F. McGahn II, June 2, 2017.

⁴⁸ Letter from Ranking Member John Conyers, Jr., et al., to President Donald Trump, May 24, 2017.

⁴⁹ Letter from Ranking Member John Conyers, Jr., et al., to Deputy Attorney General Rod J. Rosenstein, U.S. Dept. of Justice, and Acting Director Andrew G. McCabe, Federal Bureau of Investigation, May 9, 2017.

⁵⁰ See, e.g., Letter from Ranking Member John Conyers, Jr., et al., to Chairman Bob Goodlatte, H. Comm. on the Judiciary, July 20, 2017.

⁵¹ Markup Tr. (statement of Rep. Jamie Raskin).

⁵² *Id.* (statement of Chairman Bob Goodlatte).

This resolution seems to be just one more opportunity for my colleagues on the other side of the aisle to vicariously voice Hillary Clinton’s long and growing list of reasons why she lost the election.⁵³

We appreciate the Majority’s stated desire to move on from the events that brought us the Trump Administration. We have difficulty understanding, however, why those circumstances excuse our Committee from its duty to conduct oversight of the executive branch—or how the Majority’s new plan to investigate Hillary Clinton, Cheryl Mills, and Huma Abedin will help put the election behind us.

At markup, the Majority expressed its standard arguments against doing oversight of the Trump Administration. None of those defenses are convincing.

The Majority does not believe that the current problems at the Department of Justice merit the Committee’s attention because “[t]here are other committees that have jurisdiction over parts of this.”⁵⁴ We cannot ignore our oversight responsibilities simply because the House and Senate intelligence committees are investigating similar subject matters. The challenges facing the Department of Justice have expanded far beyond the question of collusion with the Russian government. Senator Chuck Grassley (R-IA), Chairman of the Senate Committee on the Judiciary, agrees that “[t]he Judiciary Committee has an obligation to fully investigate any alleged improper partisan inference in law enforcement investigations.”⁵⁵ Our Senate Judiciary counterparts have begun their work in a bipartisan manner, and so should we.

The Majority also argues that there may not be any oversight role for Congress to play at the moment. According to Chairman Goodlatte, “Until Mr. Mueller’s investigation is complete, it is redundant for the House of Representatives to engage in fact-gathering on many of the same issues.”⁵⁶ Nothing about the special counsel investigation prevents us from conducting our own oversight. The Congressional Research Service has compiled nearly a century of precedent—from the Palmer Raids of 1920 to the Majority’s own investigation of Operation Fast & Furious in 2011—where congressional investigations have overlapped with ongoing investigations at the Department of Justice.⁵⁷

The Majority insists that we cannot conduct oversight of the Department of Justice while the special counsel investigates the Trump Administration—because the Majority falsely claims that the Committee *also* did not ask questions about Hillary Clinton’s use of a private email server while *that* investigation was ongoing. For some reason, the Majority believes that the Committee “did not hold any hearings until [Director Comey] completed his investigation” of Hillary Clinton.⁵⁸ The record shows otherwise. In fact, the Committee held hearings with both the Attorney General⁵⁹ and

⁵³ Markup Tr. (statement of Chairman Bob Goodlatte).

⁵⁴ *Id.*

⁵⁵ *Id.* Letter from Chairman Charles E. Grassley, S. Comm. on the Judiciary, to Ranking Member Dianne Feinstein, S. Comm. on the Judiciary, June 13, 2017.

⁵⁶ Markup Tr. (statement of Chairman Bob Goodlatte).

⁵⁷ Cong. Research Service, *Congressional Investigations of the Department of Justice, 1920–2012: History, Law, and Practice*, R42811 (Nov. 5, 2012).

⁵⁸ Markup Tr. (statement of Chairman Bob Goodlatte).

⁵⁹ “Should we expect that when the FBI finishes its investigation of this matter that no charges will be filed? Does the Department allow statements by the President to dictate its in-

the Director of the FBI⁶⁰ while the Clinton investigation was ongoing. The Chairman made a point of asking about the Clinton case at each of those hearings, long before the investigation had concluded.

Finally, the Majority contends that we should not examine the removal of former FBI Director [James] Comey because “it was President Trump’s responsibility to fire an FBI Director who had clearly transgressed beyond his statutory role as investigator.”⁶¹ Many of us disapprove of Mr. Comey’s handling of the Clinton investigation,⁶² and Deputy Attorney General Rosenstein laid out a well-reasoned criticism of Mr. Comey’s conduct on the day Mr. Comey was fired.⁶³ But not even the President believes that the President fired Mr. Comey because of his treatment of Hillary Clinton. President Trump was explicit: he was thinking of “this Russia thing with Trump and Russia” when he took action; the Deputy Attorney General “made a recommendation, but regardless of recommendation [sic], I was going to fire Comey.”⁶⁴ The Committee has an obligation to examine Mr. Comey’s dismissal. We should do so as a matter of routine oversight, if not as part of a specific inquiry into the President’s attempt to derail an ongoing criminal investigation.

The Majority told us that the Gaetz Amendment was designed to uncover Hillary Clinton’s “real crimes” and “harmful lies.”⁶⁵ Just as we doubt that the President fired Director Comey because of how the Clinton investigation was handled, we question whether our Majority has closed ranks to defend the President out of a sense of fairness to the former Secretary of State.

CONCLUSION

The Committee has a duty to ask questions of the Trump Administration and to protect the institutions that have been trusted to our oversight. As introduced by Representatives Jayapal and Cicilline, H. Res. 446 would have helped us to begin asking those questions.

The Gaetz Amendment is a study in irresponsibility. We are deeply disappointed that the Majority would endorse a string of conspiracy theories cobbled together from some of the most objectionable corners of the Internet.

We hope that, in the time that has passed between consideration of H. Res. 446 and the filing of this report, the Majority has reconsidered the danger of allowing the fringe of the President’s political

investigative practices?” *Oversight of the U.S. Department of Justice: Hearing Before the H. Comm. on the Judiciary*, 114th Cong. 17 (2015) (statement of Chairman Bob Goodlatte).

⁶⁰ “Do you believe that a foreign intelligence agency, particularly an adversary’s, could benefit from acquiring and exploiting sensitive and classified information of a top-level U.S. government official?” *Oversight of the Federal Bureau of Investigation: Hearing Before the H. Comm. on the Judiciary*, 114th Cong. 28 (2015) (statement of Chairman Bob Goodlatte).

⁶¹ Markup Tr. (statement of Chairman Bob Goodlatte).

⁶² “Having determined that there was nothing to prosecute and having announced that quite properly . . . to comment . . . that what she did was right or wrong or good or bad is not the appropriate role of a prosecuting agency.” *Oversight of the Federal Bureau of Investigation: Hearing Before the H. Comm. on the Judiciary*, 114th Cong. 42 (2016) (statement of Rep. Jerrold Nadler (D-NY)).

⁶³ Letter from Deputy Attorney General Rod J. Rosenstein to Attorney General Jeff Sessions, U.S. Dept. of Justice, May 9, 2017.

⁶⁴ Interview with President Donald Trump, NBC News, May 11, 2017.

⁶⁵ Markup Tr. (statement of Rep. Matthew Gaetz).

base to dictate the terms of government policy.⁶⁶ We will continue to push for the Committee to conduct meaningful oversight of the Department of Justice and its component agencies. We will continue to ask the Majority to join us in this effort before the situation deteriorates even further.

We oppose H. Res. 446 in its current form, and urge our colleagues to do the same. For these reasons, we dissent.

MR. CONYERS, JR.
MR. NADLER.
MS. LOFGREN.
MS. JACKSON LEE.
MR. COHEN.
MR. JOHNSON, JR.
MR. DEUTCH.
MR. GUTIÉRREZ.
MS. BASS.
MR. RICHMOND.
MR. JEFFRIES.
MR. CICILLINE.
MR. SWALWELL.
MR. LIEU.
MS. JAYAPAL.
MR. RASKIN.

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⁶⁶See, e.g., Julie Bykowicz, *President Trump revisits his Charlottesville comments in angry speech*, ASSOC. PRESS, Aug. 23, 2017; John C. Danforth, *The real reason Trump is not a Republican*, WASH. POST, Aug. 24, 2017.