

RESOLUTION OF INQUIRY REQUESTING THE PRESIDENT AND DIRECTING
 THE ATTORNEY GENERAL TO TRANSMIT, RESPECTIVELY, CERTAIN DOC-
 UMENTS TO THE HOUSE OF REPRESENTATIVES RELATING TO THE
 PRESIDENT'S USE OF THE PARDON POWER UNDER ARTICLE II, SECTION
 2 OF THE CONSTITUTION

JUNE 28, 2018.—Referred to the House Calendar and ordered to be printed

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

ADVERSE REPORT

together with

DISSENTING VIEWS

[To accompany H. Res. 928]

The Committee on the Judiciary, to whom was referred the reso-
 lution (H. Res. 928) of inquiry requesting the President and direct-
 ing the Attorney General to transmit, respectively, certain docu-
 ments to the House of Representatives relating to the President's
 use of the pardon power under article II, section 2 of the Constitu-
 tion, having considered the same, report unfavorably thereon with
 an amendment and recommend that the resolution as amended not
 be agreed to.

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The Amendment

The amendment is as follows:

Strike all that follows 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, to the House of Representatives, not later than 14 days after the date of the adoption of this resolution, copies of any document, record, audio recording, memorandum, correspondence, or other communication in their possession, or any portion of any such communication, that refers or relates to the following:

(1) Any pardon issued by the President on or after January 20, 2017.

(2) Any pardon under consideration by the President, including pardons under consideration for any of the following individuals:

(A) Michael Cohen, the President's personal attorney.

(B) Paul Manafort, former chairman of the Trump Presidential campaign.

(C) Richard Gates, former deputy chairman of the Trump Presidential campaign.

(D) Michael Flynn, former National Security Advisor.

(E) George Papadopoulos, advisor to the Trump Presidential campaign.

(F) Alex van der Zwaan, attorney and former associate of Paul Manafort.

(3) Any consideration of the President's power to pardon himself, including his assertion that he has the "absolute right" to pardon himself.

(4) President Trump's decision to issue pardons without first consulting the Office of the Pardon Attorney of the Department of Justice.

Purpose and Summary

H. Res. 928 is a non-binding resolution of inquiry that requests that the Trump Administration provide the House of Representatives with certain documents related to the President's use of the pardon power under article II, section 2 of the Constitution.

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 cal-

culating 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 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. 928 is the seventh resolution of inquiry that the Judiciary Committee has been forced to consider this Congress. This is the same number of resolutions of inquiry that all other House committees combined have had to consider. Moreover, the resolution is completely unnecessary. It seeks information about things that have not yet happened. It is completely prospective and there is no indication that, in issuing the pardons he has issued, President Trump has acted improperly or outside the scope of his constitutional authority. Indeed, President Trump has pardoned five individuals and commuted the sentences of only two. The Justice Department’s U.S. Attorney’s Manual states that “commutation of sentence is an extraordinary remedy that is rarely granted.” Thus far, President Trump’s actions with the pardon power are in line with that sentiment.

Hearings

The Committee on the Judiciary held no hearings on H. Res. 928.

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

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

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

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

⁵*Id.*

⁶*Id.*

Committee Consideration

On June 26, 2018, the Committee met in open session and ordered the resolution (H. Res. 928) unfavorably reported by a roll call vote of 13–12, a quorum being present.

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. 928.

1. Motion to report H. Res. 928 unfavorably to the House. Approved 13 to 12.

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)	X		
Mr. King (IA)	X		
Mr. Gohmert (TX)			
Mr. Jordan (OH)			
Mr. Poe (TX)			
Mr. Marino (PA)	X		
Mr. Gowdy (SC)			
Mr. Labrador (ID)			
Mr. Collins (GA)	X		
Mr. DeSantis (FL)			
Mr. Buck (CO)	X		
Mr. Ratcliffe (TX)	X		
Ms. Roby (AL)			
Mr. Gaetz (FL)	X		
Mr. Johnson (LA)	X		
Mr. Biggs (AZ)			
Mr. Rutherford (FL)	X		
Ms. Handel (GA)	X		
Mr. Rothfus (PA)	X		
Mr. Nadler (NY), Ranking Member		X	
Ms. Lofgren (CA)			
Ms. Jackson Lee (TX)		X	
Mr. Cohen (TN)		X	
Mr. Johnson (GA)		X	
Mr. Deutch (FL)		X	
Mr. Gutiérrez (IL)			
Ms. Bass (CA)			
Mr. Richmond (LA)			
Mr. Jeffries (NY)		X	
Mr. Cicilline (RI)		X	
Mr. Swalwell (CA)			
Mr. Lieu (CA)		X	
Mr. Raskin (MD)		X	
Ms. Jayapal (WA)		X	
Mr. Schneider (IL)		X	
Ms. Demings (FL)		X	
Total	13	12	

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. 928 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 finds that H. Res. 928 contains no directed rule making 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. 928 requests certain documents from the Trump Administration related to the President's use of the pardon power under article II, section 2 of the Constitution.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H. Res. 928 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. 928, 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 Rep-

representatives related to the President's use of the pardon power under article II, section 2 of the Constitution.

Dissenting Views

H. Res. 928 directs President Donald Trump and U.S. Attorney General Jeff Sessions to produce any information related to the President's decision to use (or abuse) the pardon power under article II, section 2 of the Constitution. This legislation is absolutely necessary given the Majority's repeated failure to conduct proper oversight of President Trump's use of the pardon power.

DESCRIPTION AND BACKGROUND

Under the rules and precedents of the House, a resolution of inquiry is used to obtain information from the executive branch. A resolution of inquiry is directed at the President or the head of a Cabinet-level agency, requesting facts within the control of the executive branch.¹ As a "simple resolution" (designated by "H. Res."), a resolution of inquiry does not carry the force of law. Thus, "compliance by the executive branch with the House's request is voluntary, resting largely on a sense of comity between co-equal branches of government and a recognition of the necessity for Congress to be well-informed as it legislates."²

House Rules afford resolutions of inquiry a privileged parliamentary status. A Member files a resolution of inquiry like any other legislation. The resolution is then referred to the proper committee of jurisdiction. If the committee does not report the resolution to the House within 14 legislative days of its introduction, however, a motion to discharge the resolution from committee can be made on the House floor.³ In practice, even when the Majority opposes a resolution of inquiry, a committee will mark it up and report it adversely to prevent its sponsor from making a privileged motion to call up the legislation on the House floor.⁴

H. Res. 928, which was introduced by Representative Ted Lieu (D-CA) on June 13, 2018, together with Rep. Bill Pascrell, Jr. (D-NJ) as an original cosponsor, would direct the President and the Attorney General to transmit to the House, not later than 14 days after the enactment of the resolution, copies of any document, record, memo, correspondence, or other communication of the White House or the Department of Justice (DOJ), respectively, that refers or relates to:

- (1) any presidential pardon issued after January 20, 2017;
- (2) any pardon under consideration by the President, including but not limited to Michael Cohen, Paul Manafort, Richard Gates, Michael Flynn, George Papadopoulos, or Alex van der Zwaan;
- (3) any consideration of the President's ability to pardon himself; and
- (4) The President's decision to issue pardons without consulting the DOJ's Office of the Pardon Attorney.

¹Christopher M. Davis, *Resolutions of Inquiry: An Analysis of Their Use in the House, 1947-2011*, CONG. RESEARCH SERVICE, May 15, 2012 (R40879).

²*Id.* at 2.

³House Rule XIII, clause 7.

⁴Davis, *supra* note 1, at 1.

WHY H.RES. 928 IS NEEDED

A clear pattern is emerging regarding President Trump's use of the pardon power. The following is a partial list of individuals whom President Trump has either pardoned or granted a commuted sentence:

(1) Sheriff Joe Arpaio:⁵ the controversial and racist former sheriff from Arizona who was found guilty of criminal contempt for continuing to racially profile Latinos in violation of a court order. He did not serve any time in prison and his sentence was pardoned by President Trump on August 25, 2017;

(2) Kristian Saucier:⁶ a navy sailor who was convicted for the unauthorized retention of classified information, specifically photos depicting classified areas of the U.S.S. *Alexandria* submarine. He was found guilty in 2016. His cause was championed by former National Security Advisor Michael Flynn, and the President pardoned him on March 9, 2018;

(3) Scooter Libby:⁷ the former chief of staff to Vice President Dick Cheney who was convicted of perjury and obstruction of justice for his involvement in revealing the identity of Valerie Plame, a former covert Central Intelligence Agency operative. His sentence was originally commuted by President George W. Bush and then pardoned by President Trump in April 2018;

(4) Dinesh D'Souza:⁸ the conservative political author who pled guilty to campaign finance law violations in 2014. He was given five years of probation prior to receiving his pardon on May 31, 2018.

These individuals were convicted of crimes similar to those alleged by the Special Counsel against various associates of President Trump. Former National Security Advisor Mike Flynn and former Trump Deputy Campaign Manager Rick Gates have plead guilty to making false statements to the Federal Bureau of Investigation (FBI) and federal prosecutors.⁹ Mr. Gates' associate Alex van der Zwaan and former Trump campaign advisor George Papadopoulos also pled guilty to making false statements to the FBI.¹⁰ President Trump's former campaign manager Paul Manafort has yet to plead to any counts, but faces multiple charges of money laundering, wire fraud, witness tampering, obstruction of justice, making false statements, Foreign Agent Registration Act violations, and conspiracy against the United States.¹¹ President Trump's personal attorney Michael Cohen, while not yet indicted, is allegedly being investigated for bank fraud, wire fraud, and campaign finance law viola-

⁵@realDonaldTrump, Twitter, Aug. 25, 2017, 07:00 P.M.; Julie Hirschfeld Davis & Maggie Haberman, *Trump Pardons Joe Arpaio, Who Became Face of Crackdown on Illegal Immigration*, N.Y. TIMES, Aug. 25, 2017.

⁶Matt Zapotosky, *Trump pardons former Navy sailor convicted of retaining submarine pictures in case that drew comparisons to Clinton*, WASH. POST, Mar. 9, 2018.

⁷John Wagner, Matt Zapotosky, & Joshua Dawsey, *Trump issues pardon to Scooter Libby, former chief of staff to Vice President Cheney*, WASH. POST, Apr. 13, 2018.

⁸Peter Baker, *Dinesh D'Souza, Pardoned by Trump, Claims Victory Over Obama Administration*, N.Y. TIMES, June 1, 2018.

⁹*United States v. Michael T. Flynn*, No. 1:17-cr-232 (D.D.C. Nov. 30, 2017) (plea agreement); *United States v. Richard W. Gates*, No. 1:17-cr-201 (D.D.C. Feb. 23, 2018) (plea agreement).

¹⁰*United States v. Alex van der Zwaan*, No. 1:18-cr-31 (D.D.C. Feb. 14, 2018) (plea agreement); *United States v. George Papadopoulos*, No. 1:17-cr-182 (D.D.C. Oct. 5, 2017) (plea agreement).

¹¹*United States v. Paul Manafort & Konstantin Kilimnik*, No. 1:17-cr-201 (D.D.C. June 8, 2018) (third superseding indictment).

tions—all crimes that have already been the focus of President Trump’s pardons.¹²

Moreover, it is clear from President Trump’s public statements—as well as those of individuals closely associated with him—that the President is signaling his willingness to pardon individuals, including himself, in order to obstruct the ongoing Special Counsel investigation.

The statements by President Trump, his surrogates, and his legal team suggest that he views the pardon power as unlimited and that he will use it to undermine the ongoing investigation into efforts by Russia to interfere with the 2016 presidential election. For example, President Trump has claimed, “As has been stated by numerous legal scholars, I have the absolute right to pardon myself, but why would I do so when I have done nothing wrong?”¹³ Similarly, the President’s attorney Rudy Giuliani has argued that the President’s powers are so expansive that “[i]n no case can he be subpoenaed or indicted.”¹⁴ Mr. Giuliani later suggested that the President may consider pardoning Paul Manafort because he believes Mr. Manafort was treated unfairly by the Special Counsel. He stated, “When it’s over, hey, he’s the president of the United States. He retains his pardon power. Nobody is taking that away from him. He can pardon, in his judgment.”¹⁵

The President and his surrogates’ claims run counter to the Framers’ intent and the basic rule of law. The Framers of the Constitution discussed the issue of self-pardon and concluded that the concept was inherently corrupt.¹⁶ Furthermore, the DOJ’s Office of Legal Counsel reiterated this position when it informed President Richard Nixon he could not pardon himself: “Under the fundamental rule that no one may be the judge in his own case, the President cannot pardon himself.”¹⁷

CONCLUSION

In light of his public statements—as well as those of his close associates—President Trump and his use of the pardon power should be the subject of exhaustive oversight by this Committee. Judiciary Democrats have written Chairman BOB GOODLATTE on three separate occasions this Congress requesting that he hold hearings on abuse of the pardon power, with no response.¹⁸ It is abundantly clear that the Majority has chosen to ignore our critical concerns and refuses to conduct any meaningful oversight of the Trump Administration. Instead, the Majority voted to report H. Res. 928 un-

¹²Carol D. Leonnig, Tom Hamburger, & Devlin Barrett, *Trump attorney Cohen is being investigated for possible bank fraud, campaign finance violations*, WASH. POST, Apr. 9, 2018.

¹³@realDonaldTrump, Twitter, June 4, 2018, 08:35 A.M.

¹⁴S.V. Date, *Giuliani: Trump could have shot Comey and still couldn’t be indicted for it*, HUFFPOST, June 3, 2018.

¹⁵Hope Yen, *Rudy Giuliani Says President Trump Could Use Pardon Power After Russia Probe*, TIME, June 18, 2018.

¹⁶*In Convention, Richmond, June 18, 1788*, in THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE CONSTITUTION, ed. Jonathan Elliot, 5 vols. (Washington, DC: Taylor and Maury, 1863), 4:498.

¹⁷Mary C. Lawton, Acting Assistant Attorney General, Office of Legal Counsel, U.S. Dep’t of Justice, *Memorandum Opinion for the Deputy Attorney General* (Aug. 5, 1974).

¹⁸Ranking Member Nadler, et. al., to Chairman Robert Goodlatte, H. Comm. on the Judiciary, April 17, 2018, Ranking Member Nadler, et. al., to Chairman Robert Goodlatte, H. Comm. on the Judiciary, June 6, 2018, Ranking Member Nadler, et. al., to Chairman Robert Goodlatte, H. Comm. on the Judiciary, June 28, 2018, Ranking Member Nadler, et. al., to Chairman.

favorably to the House as a further effort to prevent such oversight. For the forgoing reasons, we dissent.

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. LIEU.
MS. JAYAPAL.
MR. RASKIN.
MS. DEMINGS.

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