

116TH CONGRESS
2D SESSION

H. CON. RES. 111

To establish defiance of a congressional subpoena for testimony or documents by the President as an impeachable high crimes and misdemeanor within the meaning of Article II, Section 4 of the United States Constitution.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 21, 2020

Mr. LARSON of Connecticut submitted the following concurrent resolution;
which was referred to the Committee on the Judiciary

CONCURRENT RESOLUTION

To establish defiance of a congressional subpoena for testimony or documents by the President as an impeachable high crimes and misdemeanor within the meaning of Article II, Section 4 of the United States Constitution.

Whereas the congressional power to investigate and oversee the executive branch is a cornerstone of separation of powers and necessary to expose and deter executive lawlessness, corruption, fraud, waste, and other serious abuses;

Whereas Supreme Court Justice Louis Brandeis famously observed, “Sunshine is said to be the best of disinfectants; the electric light the most efficient policeman”;

Whereas due process requires that the law warn before it strikes, the House of Representatives has voted articles

of impeachment against three Presidents, one Cabinet officer, one Senator, one Supreme Court Justice, and fourteen subordinate Federal judges without clarifying the meaning of “high crimes and misdemeanors” to give fair warning to the President, Vice President, and other civil officers of the United States;

Whereas the congressional power of oversight is the power preservative of all other congressional authorities;

Whereas the slowness of judicial adjudications of executive privilege or state secrets invocations by the President to resist a congressional subpoena is inconsistent with the political time frame in which impeachment operates;

Whereas the congressional powers of investigation or oversight of the executive branch are crippled without documents and testimonies from executive branch officials;

Whereas the House Judiciary Committee voted an article of impeachment against President Richard M. Nixon for failing to produce documents and things demanded by duly authorized Committee subpoenas pursuant to the sole power of impeachment vested by the Constitution in the House of Representatives;

Whereas in pursuit of any legitimate legislative objective, Congress is authorized to investigate and to oversee the executive branch and to impose sanctions for contempt of its processes;

Whereas legitimate objectives include determinations of whether laws have been violated, whether they have been properly enforced, whether new laws are needed, or whether funds should be appropriated or withheld;

Whereas Congress is endowed with independent constitutional authority to determine whether presidential defiance of a

congressional subpoena constitutes an impeachable high crime and misdemeanor without a court adjudication of any claimed executive privilege, state secrets, or other defense;

Whereas Congress possesses all the contempt powers of Article III courts;

Whereas Presidents Thomas Jefferson and Abraham Lincoln recognized that each branch of government has independent authority to interpret the Constitution within their respective spheres of power;

Whereas the United States Supreme Court has never opined on whether executive privilege may be invoked to block the congressional power of investigation;

Whereas in *United States v. Nixon*, 418 U.S. 683 (1974), the Court subordinated the privilege to the needs of a single criminal prosecution;

Whereas the importance of congressional oversight to our constitutional dispensation and separation of powers is orders of magnitude greater than prosecution of a single criminal case;

Whereas the Nixon tapes precedent mandates that executive privilege is subservient to legislative oversight of the executive branch; and

Whereas the absence of a specific definition of an impeachable high crime and misdemeanor invites the appearance or actuality of partisan exercises of the impeachment power which subverts its legitimacy and deters its use: Now, therefore, be it

1 *Resolved by the House of Representatives (the Senate*
2 *concurring),*

1 **SECTION 1. DEFINING PRESIDENTIAL DEFIANCE OF A CON-**
2 **GRESSIONAL SUBPOENA AS AN IMPEACH-**
3 **ABLE HIGH CRIME AND MISDEMEANOR.**

4 Congress declares that a President, Vice-President,
5 or Civil Officer's deliberate disobedience and defiance of
6 a congressional subpoena for testimony or documents in
7 pursuit of Congress legislative or oversight function may
8 constitute an impeachable high crime and misdemeanor
9 for purposes of Article II, Section 4 of the Constitution
10 of the United States.

11 **SEC. 2. EXECUTIVE PRIVILEGE.**

12 If a President refuses to comply with a congressional
13 subpoena under the invocation of executive privilege, the
14 failure to engage in good faith by properly asserting that
15 privilege with factual and legal specificity shall be taken
16 as evidence for finding disobedience and defiance of a con-
17 gressional subpoena under section 1 of this concurrent res-
18 olution.

○