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ONE HUNDRED FIFTEENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951

<http://www.house.gov/judiciary>

June 27, 2018

The Honorable Bob Goodlatte  
Chairman  
Committee on the Judiciary  
U.S. House of Representatives  
2138 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Goodlatte:

After many of us previously wrote to you on July 28, 2017 and on September 15, 2017, we are forced yet again to write to express our strong concerns regarding the Committee's fairness with respect both to markups of resolutions of inquiry and related matters under the guise of so-called "emergencies." The fact that we just learned that a revised alternative to H. Res. 938 is being considered at the Rules Committee today on an "emergency basis" only compounds the procedural unfairness being imposed.

In this regard, we believe the Committee has been hijacked by its most extreme Majority Members at the expense of upholding longstanding Committee rules and Minority rights. We would note the following:

- At yesterday's markup of two Resolutions of Inquiry—which began more than an hour late, with no notice to the Minority—Mr. Jordan offered an amendment to H. Res. 938, which was a rather straightforward resolution of inquiry that requested certain documents relating to investigatory matters involving the Department of Justice and FBI in connection with the 2016 election. By contrast the Jordan amendment in the nature of a substitute included more than 40 separate "whereas" clauses, many of which cherry-picked facts and mischaracterized aspects of the Justice Department and FBI investigations.

- Worse yet, the Jordan amendment was riddled with specific inaccuracies. For example, it leaned heavily on the March 22 subpoena you issued to the Department of Justice—a subpoena that is not valid, because you did not provide proper notice to the Ranking Member (as noted in Ranking Member Nadler’s June 21, 2018 letter to you). It also accused the Department of Justice of failing to comply with this subpoena, notwithstanding the fact that the Department has produced hundreds of thousands of responsive documents, and continues to do so.
- The Jordan amendment closed with four non-sensical “resolved” clauses purportedly “compelling the Department of Justice” to: (i) fully comply with a subpoena issued by the Judiciary Committee on March 22, 2018 (which is defective); (ii) fully comply with an April 30, 2018 subpoena issued by the House Intelligence Committee (which is outside of our Committee’s jurisdiction); (iii) provide all documents requested by Congress (this would jeopardize many pending prosecutorial matters, and we have no idea which documents are being referred to or who or when the requests were made); and (iv) provide Members of Congress and designated staff with “full access to unredacted documents” (again, we have no idea as to the scope and this would also jeopardize many pending prosecutorial and privacy matters in violation of Justice Department precedents).
- Ranking Member Nadler raised a point of order to the Jordan amendment on the basis that it was non-germane and not even written as a proper resolution of inquiry. Representative Chabot, serving as acting Chair, correctly sustained Ranking Member Nadler’s point of order based on the recommendation of the Committee Parliamentarian.
- Rather than moving to table, as has been the previous practice, the Committee immediately considered Representative Jordan’s motion to appeal the ruling of the Chair. The motion to appeal was agreed to by a vote of 16 to 13, thereby overturning the Chair’s correct ruling. We are aware of no previous committee precedent where the Majority has chosen to overturn a correct parliamentary ruling in disregard of Committee and House Rules. We were particularly disappointed that both you and the acting Chair voted present, rather than support your own ruling. As the Chair of the Committee, we rely on your fairness and objectivity to protect our rights under the Rules.
- Subsequently, with our amendments still pending at the desk, Representative Gaetz moved the previous question—an extraordinary and rarely used procedural device—the result of which cut off all debate and prevented us from offering amendments that speak to far more urgent matters than Representative Jordan’s unfounded theories and improper and unworkable demands as reflected in his amendment. This represented the

second time this Congress that a member of the Majority called the previous question and shut down Democrats from debating a pending resolution.

- As noted above, the fact that a new alternative to the Meadows resolution, H. Res 938, is being considered at the Rules Committee today compounds the many procedural and substantive concerns we have. This new version suffers many of the same flaws as the rushed Committee version. It contains many factual inaccuracies. It continues to lean heavily on the defective March 22 subpoena you issued. It is open-ended and would compromise important pending criminal investigations and personal privacy. And it obviates normal House procedures for seeking to enforce document requests in a headlong rush to the floor.
- In addition, you have refused to put any of the three subpoenas you have issued during this Congress to a vote, even though you promised that you would only issue a unilateral subpoena “during periods of recess” or in “extraordinary circumstances.” Clearly, those circumstances have not been present with regard to any of the subpoenas you have chosen to issue, and your unilateral issuance merely served to deny the Minority our right to offer amendments as well as the opportunity for an up or down vote.
- Further, Committee Republicans voted to reject Representative Lieu’s resolution of inquiry, H. Res. 928, concerning President Trump’s misuse of his pardon authority, based on the faulty premise that pardon scrutiny was outside the scope of congressional review, even though Committee Republicans had previously engaged in full-fledged hearings in 2001 concerning President Clinton’s pardons.
- As noted above, this is not the first time we have been forced to write to you concerning the unfair handling of our Members’ resolutions of inquiry. On July 28, 2017, several of us wrote to you concerning the Committee’s consideration of H. Res. 446, a resolution of inquiry offered by Representatives Jayapal and Cicilline complaining of the Majority “effectively hijacking the substance of the resolution [by replacing the resolution’s content with a list of unfounded allegations aimed at Secretary Clinton], denying Democratic amendments, and leaving the version of the resolution in legislative limbo—with Rep. Jayapal’s name still on it.”
- On September 15, 2017, we wrote to express our concern regarding your decision to move the previous question on H. Res. 899, a resolution of inquiry again introduced by Representatives Jayapal and Cicilline. At that time, we noted that your action was inconsistent with Committee precedent and denied the Minority one of the few means we have to respond to the failure of this Committee and the Administration concerning our many legitimate oversight requests.

- We would also note that on Monday, June 25, you called an “emergency” hearing for this Thursday with the Deputy Attorney General and the FBI Director. We are aware of no substantive “emergency” here; rather the hearing appears to be driven by efforts to divert attention from Special Counsel Robert Mueller’s ongoing investigation and the Trump Administration’s disastrous policies separating families at the border.

We strongly believe that our Committee works best when it operates on a bipartisan basis—at least with respect to process—and within the letter and spirit of the rules. This is particularly true for the House Judiciary Committee, which should be an exemplar of fairness and process within the Congress. Unfortunately, we believe that standard has not been observed by the Committee on a number of recent occasions. As we have previously indicated to you, we remain ready and willing to discuss these matters in an effort to return the Judiciary Committee to regular order.

Sincerely,

Jerrold Nadler

Zoe Lofgren

Bobby L. Schuler

Jim V. Cooney

Phil Jackson

Pamela Joly

Allyson Sheehan

Kristen Bell

P. M. J.

Aed Deutch

Hank Johnson

Alan

James Rask - Herger

Tom Swalmell

J. C.

Wae B. Demunip

cc: Pete Sessions, Chairman, House Committee on Rules  
Jim McGovern, Ranking Member, Committee on Rules