



Written by [Steve Byas](#) on November 13, 2018

Cruz: Legislation to “Protect” Mueller Is Unconstitutional

Appearing on CBS News’ *Face the Nation* program, Senator Ted Cruz (R-Texas), fresh off a reelection victory over far-left Democrat Beto O’Rourke, asserted that legislation being proposed to “protect” Special Counsel Robert Mueller would be unconstitutional.



Senator Jeff Flake (R-Ariz.), and Senator Chris Coons (D-Conn.) are sponsoring legislation designed to protect Mueller from restrictions on his seemingly never-ending probe into alleged Russian interference in the 2016 presidential election. Flake has publicly sparred with President Donald Trump, causing his approval ratings in Arizona to deteriorate so much that he chose not to run for reelection. Flake was also a member of the Senate Judiciary Committee, and waffled on the confirmation of Judge Brett Kavanaugh, before finally supporting him.

Cruz and Trump were bitter rivals for the Republican presidential nomination in 2016, but their differences appear to have been patched up. Cruz has supported almost all of Trump’s agenda, and the president even headed up a rally in Cruz’s senatorial reelection campaign.

Cruz is certainly in Trump’s corner on the long-running Mueller investigation. “We had a bill come through the Judiciary Committee that tried to make it impossible for a special counsel to be removed,” Cruz said. “I believe that legislation was unconstitutional, that it was inconsistent with Article II of the Constitution.”

Mueller was tasked by Assistant Attorney General Rod Rosenstein to investigate allegations that Trump and Russian President Vladimir Putin colluded to defeat Trump’s 2016 opponent, Hillary Clinton. It is still not clear what specific crime Trump may have committed, even if he did collude with the Russian leader, but be that as it may, no evidence has yet surfaced in the many months that Mueller has been on the job.

In addition, Mueller has expanded his probe beyond alleged Russian collusion into other matters he was not assigned to investigate. This and the fact that the Mueller probe has continued for a year and a half illustrates the danger of the creation of a special counsel post, with little to no oversight or limitations. It is probable that the continuing Mueller probe contributed, at least in part, to the Republican Party losing its majority in the House of Representatives.

Cruz declared on *Face the Nation* that legislation protecting Mueller from being limited, or even terminated, is an unconstitutional intrusion into the executive power of the president, but these



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remarks lead to an even larger question: Should there even be a special counsel appointed by anyone other than the president of the United States?

In Article II, Section 2 of the U.S. Constitution, it is clearly stated that the president shall have the power to appoint “other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law.” In other words, the selection of a special counsel was not properly made by Assistant Attorney General Rod Rosenstein, nor could it have been made by then-Attorney General Jeff Sessions himself. Any such appointment was actually within the constitutional jurisdiction of the president of the United States — Donald Trump.

Oversight of the executive branch is properly in the hands of the legislative branch, rather than in the hands of a special counsel, who has used a grand jury in a judicial district in which the president garnered less than 10 percent of the vote. The proper remedy for presidential misconduct is an inquiry by Congress, with members elected from districts across America — not just in the federal district of Washington City. They can hold hearings, they can issue subpoenas, and they can demand testimony under oath. If they feel it is warranted, they can even use the impeachment process, as the Constitution provides.

If the public believes that members of Congress have overstepped their bounds, then the voters can punish them at the ballot box. But in the case of “independent” or special counsels such as Mueller, prosecutorial overreach is far too tempting. The late Supreme Court Justice Antonin Scalia was troubled by the entire idea of a special counsel. He believed it both dangerous and unconstitutional, but he was the lone dissent in a Supreme Court case involving the legality of the creation of the office of independent counsels. He argued then that the statute was a dangerous limitation on the executive power that would lead to prosecutors bringing politically motivated cases.

While Trump could legally fire Mueller, the public has been so conditioned to think this very act would be of dubious legality. But, it appears that Mueller dragged out his investigation so as to affect the outcome of the off-year congressional contests.

It is far past time for an end to this entire concept of “special counsels,” and for a return to the system created by the Founding Fathers.

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