



Written by [Steve Byas](#) on July 27, 2017

Graham Favors Law to Keep President From Firing Special Counsel

“We need a check and balance here,” Senator Lindsey Graham (R-S.C.; shown) stated in announcing his effort to block President Trump from firing Robert Mueller, the special counsel. Graham said he would introduce legislation next week that would require “judicial review” if a special counsel is fired while in the act of investigating the president or members of his team.



Under the terms of the proposed legislation, Graham said, “Judges will have to look and see if the reasons stated meet the statutory definitions.”

Present law states that the attorney general has the ability to fire a special counsel. Attorney General Jeff Sessions, however, recused himself early in the Trump presidency on any matters concerning allegations of collusion with the Russians. (Trump has been highly critical of this action by Sessions in recent days.) Because of that recusal by Sessions, any dismissal of the special counsel would be left up to Deputy Attorney General Rod Rosenstein.

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Trump would have the option of firing Rosenstein if he refused to dismiss the special counsel, and replacing him with someone else who would fire Mueller. If that were to happen, the outcry would be tremendous, with the media expected to immediately make comparisons to the infamous “Saturday Night Massacre” of the Watergate Scandal.

Graham predicted that he expects his bill will have the support of “all” the Democrats (no surprise there) and some Republicans. He stated, “I am going to create a statute that would say any time a special counsel is impaneled to investigate the president or their team, a dismissal has to be reviewed by the courts.” He noted that this is the system that was used in the 1990s as a check and balance.

The Framers of the Constitution of the United States certainly included the concept of “checks and balances” in the document. But their concept of checks and balances was intended to provide for each of the three branches of the federal government — legislative, executive, and judicial — to have ways to “check” some power of the other two branches, all in an effort to restrain the power of the federal government.

The Framers, however, did not create an office of special counsel — and they certainly did not envision such an office that would be afforded powers as great as that given to the special counsel. Special counsels which investigated Iran-Contra affair during the Reagan administration, and then later the Clinton scandals, were heavily criticized for probes that ranged far beyond the original ones, and continued for extremely long periods of time.

For example, Robert Mueller, a former FBI director, was given the assignment of investigating the



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allegations that Trump and/or persons in his campaign team had engaged in collusion with the Russians to defeat Democratic opponent Hillary Clinton. Yet, as was the case with Special Counsel Ken Starr, who expanded his initial assignment in investigating President Bill Clinton to the civil case of Paula Jones, Mueller almost immediately began to expand his investigation as well.

Those who want “checks and balances,” and who believe in due process, should be concerned at such expanding of investigations. It seems that if Mueller’s assignment was allegations about possible “collusion” with the Russians, then his investigative efforts should be confined to that.

Trump has also expressed legitimate concern about the personnel that Mueller has hired to conduct his work. They are practically all partisan Democrats, with seven staffers having contributed large sums of money to either Hillary Clinton, Barack Obama, or the Democratic National Committee. None donated any money to Trump, or any other Republican presidential candidate in the last campaign.

As White House Counsellor Kellyanne Conway told Fox & Friends in a response concerning Trump’s criticisms of Mueller’s staffing choice, “People should know what folks’ past motivations, and their political motivations are — these weren’t minor donations, these were significant donations by members of that team.” She added, “They clearly wanted the other person to win. Now, whether that prejudices them in one way or another remains to be seen, but it is relevant information for people to have.”

Writing in the Washington Times, David Keene said, “Mr. Mueller’s team includes mad dog prosecutors with a record of crossing ethical lines in their attempt to ‘get’ whoever they go after.” Keene said that one of the staffers, Andrew Weissmann, a member of the Obama Justice Department, has a long history of a “disdain for due process.”

Yet, Graham’s answer to all of this is simply to turn over to judges any disputes concerning persons’ disdain for due process, when many of those people have clearly demonstrated that they are partisan, as well.

And, if Senator Graham’s bill were to become law, then we would have a situation in which a special counsel would essentially become a fourth branch of government, in which special counsels such as Mueller, Starr, and Lawrence Walsh (who pursued Iran-Contra for over half a decade) would have little fear of being terminated, regardless of their actions. Presidents, cabinet officers, and members of Congress all have limited terms of office, but there is no time limit set on a special counsel who wants to continue investigatng whatever he wishes. This is the antithesis of limited government.

Fortunately, the president still has the veto (which the Framers did place in the Constitution), which means that Graham’s bill would need two-thirds vote of each house of Congress to be enacted. In other words, it would take more than just “some Republicans” to pass — it would take a lot of Republicans to pass.

Photo of Sen. Lindsey Graham: AP Images



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