

**Prepared Statement by Senator Chuck Grassley of Iowa
Chairman, Senate Judiciary Committee
Hearing on Special Counsels and the Separation of Powers
September 26, 2017S**

Today the Committee will hear testimony related to two bills recently introduced by members of our committee: S. 1735, the Special Counsel Independence Protection Act—introduced by Senators Graham, Whitehouse, and Blumenthal, as well as by Senator Booker—and S. 1741, the Special Counsel Integrity Act—introduced by Senators Tillis and Coons. These bills have some things in common. Each bill attempts to codify current Department of Justice regulations about the removal of special counsels. Each bill provides for judicial review of the removal decision. And each bill has some bipartisan support.

It is also clear that each bill is motivated by similar concerns about the current special counsel, Robert Mueller, and his investigation into the Russian government’s efforts to interfere in the 2016 presidential election. One of the bills even specifies that it applies retroactively to May 17, 2017, the date that Robert Mueller was appointed special counsel. And both bills were introduced when media speculation was rampant that President Trump was contemplating firing Special Counsel Robert Mueller.

The President has said that he does not intend to fire the special counsel, and I think that he made the right decision. I hope that this investigation proceeds to its conclusion rapidly and stays focused on what Deputy Attorney General Rod Rosenstein charged it to investigate. The American people can be sure that this Committee, which has jurisdiction over the Department of Justice and the FBI, will take its oversight role over the investigation seriously.

While there is no doubt that current events are significant to the issues we discuss today, it is my hope that during today’s hearing, the Committee will engage in a broader discussion in the grand tradition of the Senate as the world’s greatest deliberative body. Both of the bills we will discuss today raise potential separation of powers concerns that I believe deserve the attention of the Committee and merit a full and respectful discussion. The issues we will discuss today are bigger than the President or any of us. They concern the fundamental design of our republic.

When they drafted the Constitution, the Founders of our nation were rightfully concerned that those in power would be tempted to abuse it to favor their own interests. To prevent this, the Founders divided power among three branches of government, setting up a system of government in which, to paraphrase James Madison in Federalist 51, “ambition [is] made to counteract ambition.” It is through this system of checks and balances between ambitious branches of government that our fundamental liberties are protected.

There are those who argue that the rise of the modern administrative state with its federal agencies that are vested with both executive and legislative powers—and even judicial powers sometimes—have weakened the separation of powers provisions of our Constitution, or at least changed how we should understand them. I believe that our government works best when each

branch of government has a clearly defined role, and I think that even in our modern times with our greatly expanded federal government, that is not too much to hope for. But it is something that we as members of Congress must carefully consider as we draft legislation.

Some who agree that these bills are good policy argue that by codifying the Department of Justice special counsel regulations and providing judicial review over removal decisions, they provide useful certainty about how disputes over the removal of the special counsel would proceed and afford the office of special counsel needed independence. But there are others who argue that these efforts run afoul of the Constitution by interfering with the President's ability to control the executive branch and to make sure that the laws are faithfully executed.

I hope that both those who view these bills as constitutional and those who express their doubts that they are constitutional can agree on one thing: there is a robust role for Congress in overseeing the Executive Branch, including all investigations conducted by Department of Justice-appointed special counsels. The American people also play an oversight role and can apply political pressure to any President who removes a special counsel for reasons they do not consider adequate. And, finally, the Constitution gives to Congress the ultimate check on the executive branch—the power of impeachment.

Every American has a right to expect their government to be ethical, effective, and accountable. If there is one thing I have learned in my career as a farmer and as a Senator, it is that where the sun pokes through, there can be no darkness. I have spent my career as a strong advocate for openness and transparency in government. But I also believe that the separation of powers is essential to preserve the liberties we enjoy as Americans and to an effective constitutional democracy. I look forward to today's hearing where these important issues will be discussed.