

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—115th Cong., 2d Sess.

S. 2644

To ensure independent investigations and judicial review of the removal of a special counsel, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. CORNYN (for himself, Mr. LEE, and Mr. HATCH)

Viz:

1 Strike all after the enacting clause and insert the following:
2

3 **SECTION 1. SENSE OF CONGRESS.**

4 (a) FINDINGS.—Congress finds the following:

5 (1) It is important that anyone appointed as a
6 special counsel have independence and integrity.

7 (2) It is even more important that Congress re-
8 spect the separation of powers in the Constitution of
9 the United States.

10 (3) In his seminal dissenting opinion in *Morri-*
11 *son v. Olson*, 487 U.S. 654 (1988) (referred to in

1 this section as “Morrison”), Justice Antonin Scalia
2 concluded that Congress may not infringe on the
3 President’s exercise of purely executive power, in-
4 cluding the power to prosecute, and explained that
5 the separation of powers is the single most impor-
6 tant safeguard of individual liberty, writing that,
7 “[w]ithout a secure structure of separated powers,
8 our Bill of Rights would be worthless, as are the
9 bills of rights of many nations of the world that have
10 adopted, or even improved upon, the mere words of
11 ours”.

12 (4) Justice Scalia’s opinion in Morrison is today
13 widely considered to be the law of the land across
14 the political spectrum.

15 (5) In 1999, after its experience with the inde-
16 pendent counsel statute contained in title VI of the
17 Ethics and Government Act of 1978 (Public Law
18 95–521; 92 Stat. 1824), Congress allowed such title
19 VI to expire in a bipartisan fashion.

20 (6) As Justice Scalia observed in Morrison, al-
21 though violations of the separation of powers some-
22 times “will come before the [Senate] clad, so to
23 speak, in sheep’s clothing” because “the potential of
24 the asserted [legislation] to effect important change
25 in the equilibrium of power is not immediately evi-

1 dent,” an attempt by Congress to regulate the use
2 of prosecutorial authority is a “wolf [that] comes as
3 a wolf”.

4 (b) SENSE OF CONGRESS.—It is the sense of Con-
5 gress that—

6 (1) Congress should not resurrect unconstitu-
7 tional barriers to executive authority and weaken the
8 separation of powers in the name of political expedi-
9 ency; and

10 (2) Robert Mueller should be permitted to fin-
11 ish his work in a timely fashion.