

Congress weighing plan to block Trump from firing Mueller

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As Washington whispers about a constitutional crisis, Republican and Democratic senators are working together to craft a measure that would block President Donald Trump from being able to fire Special Counsel Robert Mueller, or any other independent counsel looking into any president or his administration.

Members of Congress have warned that getting rid of Mueller would be "a step too far" and "the beginning of the end" of a Trump presidency. But constitutional scholars warn that Congress could have a tough time trying to veto Trump's action.

Lawmakers are concerned that after the president's recent blasts at Attorney General Jeff Sessions, Trump could replace one of his longest-term supporters with someone willing to dismiss Mueller. Sessions has recused himself from the investigation into Russian meddling in the 2016 election and possible collusion with Trump's campaign. Firing Mueller would violate that recusal.

Despite Trump labeling the investigation as a "witch hunt," Mueller remains highly respected in Congress.

While still under-construction, the Senate plan to block Trump from firing Mueller has bipartisan support.

Sen. Lindsey Graham, R-S.C., is working with the Democrats to craft a bill creating a three judge panel to review the firing of any special counsel investigating a president or that president's team.

"This isn't just about this special counsel," Graham said. "It's about anyone who meets this specific set of circumstances. The panel of judges would review any firing of a special counsel to ensure it meets the statutory requirements. The panel would determine whether the firing was legitimate or not."

Graham's plan has support among Democrats, though his frequent ally, Sen. John McCain, R-Ariz., wondered "How we can stop the president from firing the people he appointed I don't know."

In the House, Rep. Adam Schiff, D-Calif., said he has instructed his staff to write a bill that, if Trump fires Mueller, would have Mueller rehired, and keep his investigation alive.

"The plan would be for Congress to rehire him, to put him beyond the reach of the president," he said. "I think if the president was to make any effort to fire Mueller, it would ignite a storm."

But Rep. Emanuel Cleaver, D-Mo., said that while he believed the Senate could find bipartisan support, he has serious doubts whether the House, where Republicans have a strong majority, would agree.

"I don't think we'd have many members of the other party in this house willing to say that firing Mueller was a step too far," he said.

Rep. Mike Conaway, R-Texas, acting House Intelligence Committee chairman for the Russia investigation, said the idea is "too hypothetical at this time" for him to consider at this time.

"Let's wait and see if anything actually happens," he said. "If Mueller is fired, then I'll decide how to react."

While politically difficult, constitutional law experts consider the House plan more likely than the Senate proposal to prevail in court.

Susan Low Bloch, constitutional law professor at Georgetown University, said that the president has the power to fire those he has appointed. She explained that the special counsel is hired under Department of Justice regulations.

"I can't visualize how Congress can insert itself into those regulations," she said. "It would raise constitutional questions."

She said Congress has the power to empower its own investigations, however.

"If Congress rehired Mueller, he would be investigating for the purpose of determining whether impeachment was proper," she said. "I don't see how that could turn back into a criminal prosecution."

Mueller was appointed in May by Deputy Attorney General Rod Rosenstein. Mueller, who served for 12 years as the director of the FBI. Trump has frequently expressed his displeasure with the investigation, which reportedly is now looking into Trump business and family finances.

Roger Pilon, Constitutional Studies founding director at the libertarian Cato Institute in Washington, said the Senate plan could work if the purpose was to determine whether firing Mueller was in itself obstruction of justice.

"I see no impediment to this committee, but it wouldn't have the authority to reestablish an investigation in the Department of Justice," he said. "That's a matter of the separation of powers, and appointing a Justice Department special counsel is outside of the power of Congress. But they could certainly use this panel to determine whether there was evidence for impeachment."

Whatever the plan, Cleaver said that if Mueller were fired and Congress failed to react swiftly, he had a suggestion for the next bill that would need to be considered.

"We'd need to pass a proclamation explaining the extent of the weakness of this body," he said.

