

Legislation to Enhance Transparency for Special Counsel Investigations: *Protecting the public's right to know about the Special Counsel's report*

January 2019: More than three quarters of Americans think the report on Special Counsel Robert Mueller's investigation into foreign influence in the 2016 presidential election should be released to the public.ⁱ Yet the regulations governing Mueller's appointment do not require that the report be made available to anyone – whether Congress or the public. Instead, the law leaves that decision to the Attorney General or Deputy Attorney General, whomever is overseeing the probe. To prevent interference or obstruction of justice, it is imperative that Congress ensures that Mueller's final report and related documents see the light of day.

The Special Counsel's Office has charged dozens of former Trump campaign officials, their associates, and Russian individuals and entities. Those charges have yielded a collection of indictments and plea deals. While Mueller has released some information through public indictments,ⁱⁱ without explicit disclosure requirements the public may never have full access to the truth. Some members of Congress have been working to pass legislation to protect the Mueller investigation. The Senate Judiciary Committee passed a bipartisan bill in April 2018 with an amendment requiring the Justice Department provide a report to Congress if a special counsel is removed, or when the investigation concludes.ⁱⁱⁱ The legislation has received widespread bipartisan support, but has been blocked from receiving a vote on the floor by the Senate Majority Leader, Mitch McConnell.^{iv}

Representatives in the House introduced the Special Counsel Transparency Act in April 2018,^v which requires the DOJ to report to Congress on all evidence of criminal activity that implicates the president, anyone in the executive office, or anyone appointed by the president. Grand jury information is also covered, which is particularly important in order for Congress to carry out its oversight role.^{vi} Similar legislation is expected to be introduced in the 116th Congress. Senators are preparing to introduce a bill that would order the release of the final report regardless of whether Mueller is fired, and give the Special Counsel sole discretion to produce an unclassified report after consultation with the DOJ.

Under the Federal Records Act, the Justice Department is required to preserve all documents and communication produced by special prosecutors and independent counsels.^{vii} Nonetheless, concerns over the potential for political interference raises fears that some evidence may be misused or destroyed. Moreover, even if all evidence is properly preserved and eventually disclosed, it could be decades before the full truth comes to light.^{viii} The National Archives and Records Administration only recently released the famous Watergate "Road Map," decades after Special Prosecutor Archibald Cox sent it to Congress in 1974.^{ix} Special Prosecutor Lawrence Walsh's report on the Iran-Contra scandal was made public only after President George H.W. Bush pardoned the high-level officials charged by Walsh – pardons that came at the urging of William Barr, Trump's current nominee for Attorney General.^x

The American public cannot afford to wait decades for the results of Robert Mueller's work. There is enormous public interest in the Russia investigation, and legislation is needed to ensure transparency and allow the Special Counsel to finish the investigation without interference. All documents that pertain to this investigation must be preserved and conclusions shared, so we can protect our system of checks and balances and demand accountability if wrongdoing occurred.

ⁱ NPR/PBS NewsHour, *Marist Poll Results*, December, 7, 2018: <https://bit.ly/2CNsl7w>.

ⁱⁱ Michael Flynn, *Unsealed Documents in Special Counsel Mueller's Investigation [Updated]*, Just Security, December 20, 2018: <https://bit.ly/2GYFJFa>.

ⁱⁱⁱ OTG's Executive Director Applauds Congress for Protecting the Public's Right to Know About the Results of the Mueller Investigation, Open the Government, April 26, 2018: <https://bit.ly/2GV44Ag>.

^{iv} Lisa Lambert, *Special counsel protection bill stalls in U.S. Senate, Flake starts protest*, Reuters, November 28, 2018: <https://reut.rs/2Vt7E7R>.

^v OTG Supports the Special Counsel Transparency Act of 2018 to Ensure the Results of Mueller's Investigation are Preserved and Shared with Congress, Open the Government, April 17, 2018: <https://bit.ly/2BYhjut>.

^{vi} Peter M. Shane, *Even if Trump Tries to Fire Mueller, He Can't Fire the Grand Jury*, Slate, December 10, 2018: <https://bit.ly/2QI7VpC>.

^{vii} National Archives & Records Administration, *Special Prosecutors and Independent Counsels Records*: <https://bit.ly/2GR5tlk>.

^{viii} National Archives & Records Administration, *Records of Independent Counsels* (last updated Aug. 15, 2016): <https://bit.ly/2TtiYzl>.

^{ix} Benjamin Wittes, *The Watergate Road Map Unsealed*, Lawfare, Oct. 31, 2018: <https://bit.ly/2Dfr4CL>.

^x Philip Shenon, *How Trump's Next Attorney General Could Derail the Mueller Probe*, Politico Magazine, December 11, 2018: <https://politi.co/2CKfMcQ>; Lawrence E. Walsh, Final Report of the Independent Counsel for Iran/Contra Matters, Vol. I: Investigations and Prosecutions, Aug. 4, 1993: <https://bit.ly/2R3Kgzi>.