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REMARKS OF REP. HENRY A. WAXMAN
SYMPOSIUM ON CONGRESSIONAL OVERSIGHT
September 18, 2006

It is an honor to be here among this distinguished group and to speak on such an important topic: congressional oversight.

The organizers of this event have long records of service to the nation. Scott Lilly worked as the Democratic staff director on the Appropriations Committee for many years and his wealth of experience was exceeded only by his commitment to the House, his encyclopedic knowledge of federal programs, and his political instincts. Professor Thurber is one of the nation's leading experts on Congress. And Joe Minarek has had a distinguished career on the House Budget Committee and at OMB, earning a reputation as an expert on budget policy.

They and their organizations — the Center for American Progress, American University, and the Committee for Economic Development — have put together an excellent program, and I am glad I can be a part of it.

Oversight is a vital function of Congress, but it is often overlooked. Evaluations of Congress tend to focus on Congress' legislative role. That's understandable: Congress is the nation's law-making body. But an exclusive focus on the legislative function neglects one of Congress' most important obligations: using its oversight authority to rein in the excesses of the executive branch.

The framers of the Constitution divided power among three branches of government so that none of the three could grow too powerful. Particularly in modern times, as the executive branch has grown increasingly strong, congressional oversight has become essential to maintaining our system of checks and balances.

Done right, congressional oversight can be exceptionally effective in shaping national policy. Simply by holding hearings, asking questions, and releasing information, Congress can influence the direction of the nation even without passing legislation.

Let me give you an example from my own experience.

Twelve years ago, when the Democrats were last in control of Congress, I chaired an investigation into the practices of the tobacco industry. Some of you may remember parts of that investigation. In one hearing, the CEOs of the major tobacco companies came before the committee under oath and testified that nicotine was not addictive.

Congress didn't pass any tobacco legislation that year. In fact, 12 years later, we still haven't passed meaningful tobacco reform. But by calling the tobacco executives before Congress and releasing thousands of pages of internal tobacco industry documents, Congress had an enormous impact on the public attitudes toward the tobacco industry and on national policy.

After the hearings, state attorney generals across the nation brought lawsuits against the tobacco industry that restricted tobacco advertising and produced a settlement worth over $200 billion. FDA tried to regulate tobacco. And state and local governments enacted laws to eliminate exposure to toxic secondhand smoke.

It would be wrong to ascribe these accomplishments to the congressional hearings. It took the hard work of thousands of dedicated activists to build public support for these important tobacco control initiatives. But without question, those congressional hearings 12 years ago had a galvanizing effect.

A more recent example occurred last year in this very room, when Chairman Tom Davis and I held hearings that examined the use of steroids in baseball and other professional sports. We didn't pass any legislation after these hearings. But the fact that we subpoenaed players and made them and the leagues testify in public had a tremendous impact. Major League Baseball completely rewrote its steroids policy, and other leagues strengthened theirs.

These examples illustrate the potential of congressional oversight. But all too often, this promise is squandered.

In recent years, considerable attention has been given to what has happened to the legislative process in Congress. These analyses have described how increasing partisanship has changed long-standing congressional procedures. Committees have been stripped of power. Major pieces of legislation are crafted behind the closed doors of the Republican caucus and then rushed through the House without providing time for members to understand what they are voting on. Arms are twisted on the House floor as votes are left open for hours.

And the minority party, which represents nearly half the seats in the Congress, is virtually shut out of the process. The leadership-controlled Rules Committee applies a special rule — known as Catch 22 — in assessing Democratic amendments. The only amendments we are allowed to offer on the floor are ones that the Republican leadership knows will be defeated. As a result, many of our best and most promising ideas can never be debated.

What many people don't realize is that the same thing has happened to congressional oversight. Over the last 12 years, congressional oversight — like the legislative process — has become increasingly polarized, increasingly partisan, and increasingly dysfunctional.

There are some exceptions to this trend. One is the chairman of my Committee, Tom Davis. Mr. Davis is now in the fourth year of his chairmanship, and every year, he seems to grow in independence and effectiveness as an investigator. But as much as I commend his example, it also puts into stark relief how ineffective so many of his colleagues have become.

I have been the ranking Democrat on the House Committee on Government Reform for the last ten years. Our Committee is the primary investigative committee in the House. Under the House rules, we have the authority to examine any subject within the jurisdiction of any House committee and make recommendations to that committee based on what we find. It is a sweeping grant of oversight authority, in effect giving our Committee authority to investigate any federal program.

From this vantage point, I have seen firsthand the destruction that partisanship can wreak on congressional oversight. And what I would like to do in the remainder of my remarks is tell you some of what I have observed and make some suggestions for the future.

Over the last decade, congressional oversight has resembled a pendulum. When President Clinton was in office, congressional committees were themselves on steroids and investigated every possible allegation of wrongdoing, no matter how small. But when President Bush took over, oversight virtually ceased. No matter how big the issue, Congress now often looks away.

One of the investigative powers that congressional committees have is the power to issue subpoenas. Lawyers are familiar with subpoenas from civil and criminal litigation. But congressional subpoenas are quite different than litigation subpoenas. When a subpoena is issued in a judicial context, the party receiving the subpoena can appeal to a judge to modify or quash the subpoena if it is overly broad or too burdensome or seeks irrelevant information.

Parties who receive a congressional subpoena have no such option. If the recipient can't persuade the committee that issued the subpoena to modify its request, the individual has to comply. If he or she doesn't, the committee can recommend that the individual be held in contempt of Congress, which is a criminal offense. The only time a court will look at whether the subpoena is lawful is in the criminal case seeking to convict the person for contempt. That's obviously a path virtually no one is willing to take.

Because the congressional subpoena power is so intrusive and so coercive, it has historically been used with moderation. During the 16 years I chaired the Health and Environment Subcommittee of Energy and Commerce, my subcommittee never issued a single subpoena … not even during our investigation of the tobacco industry. When subpoenas were

issued by other committees, they were always issued with the consent of the ranking member of the committee or by a committee vote.

But this changed when Republicans took control of Congress. In 1997, when Rep. Dan Burton took over as chairman of the House Government Reform Committee, the Committee majority voted to grant him unilateral authority to issue subpoenas.

Over the next four years, Mr. Burton unilaterally issued over 1,000 subpoenas to investigate allegations of Clinton Administration and Democratic Party wrongdoing. That's two subpoenas per day the House was in session.

As a result of these subpoenas, the Government Reform Committee received over two million pages of documents. That's like getting 4,000 pages of documents to review every day the House was in session.

Many of these documents were highly sensitive. The information Congress demanded and received included details of discussions between President Clinton and his closest advisors, internal e-mails from the Office of the Vice President, FBI interview notes, and documents describing internal Administration deliberations.

At one point, I asked GAO to assess how much White House time was involved in responding to congressional inquiries relating to allegations of campaign finance abuses over an 18-month period between 1996 and 1998. GAO found that White House staff spent over 55,000 hours responding to hundreds of congressional requests.

Government Reform and its Senate counterpart were the most visible investigative committees during this period. But they weren't the only committees involved in these investigations. GAO reported that 22 different congressional committees had campaign finance-related investigations during the Clinton Administration.

The subpoena power was not the only authority Congress misused during these investigations. The House gave Mr. Burton the authority to conduct depositions as part of his campaign finance investigation. Mr. Burton used this authority to haul 141 individuals who worked in the Clinton Administration, including top advisors to the President, before the Committee for depositions. These officials spent 568 hours in depositions before Committee staff. This is equivalent to 71 business days — over half the number of legislative days in a typical year in the House of Representatives — devoted solely to conducting depositions of Clinton Administration officials.

The Bush Administration takes the position that Congress has no authority to question presidential advisors. It took an enormous effort by the 9-11 Commission to get the National Security Advisor, Condoleezza Rice, to make an appearance before it. But we regularly had the top White House officials in the Clinton Administration before the Committee in hearings and in depositions run by staff. These officials included two White House chiefs of staff (Mack

McLarty and Erskine Bowles), many top presidential advisors (such as Bruce Lindsey, Cheryl Mills, and George Stephanopoulos), and four separate White House Counsels (Bernard Nussbaum, Jack Quinn, Charles Ruff, and Beth Nolan).

Sometimes these officials had to spend the entire day behind closed doors being grilled by committee staff. One senior White House official, Marsha Scott, had to spend over 36 hours in depositions before the House and Senate.

Perhaps these investigative efforts could have been justified if we were investigating real issues. But during this time, there were few allegations too outlandish for congressional investigators to explore. To name just a few examples, Congress looked at:

- Whether Clinton sold burial plots in Arlington cemetery for campaign contributions;
- Whether the White House altered videotapes of meetings to conceal wrongdoing;
- Whether Clinton sent aside a national monument in Utah to benefit a wealthy Indonesian family called the Riadys; and
- Whether the White House misused the President's Christmas card list.

These allegations typically had three features in common: they made for great headlines; they consumed considerable resources to investigate; and they ended up being completely unsubstantiated.

I would like to tell you one anecdote that illustrates how these investigations got launched. As you may remember, Congress and the FBI spent enormous resources investigating a charge made by a Republican chairman — Gerald Solomon, if you want a name — that there was "evidence" that a DNC fundraiser, John Huang, committed espionage and sold secrets to the Chinese. The allegation was made in 1997 and it was covered on the network news.

Like so many others, this allegation was never corroborated. But it was not until two years later that we got to see what started the investigation.

By then, Dan Burton was explaining the absence of criminal prosecutions by alleging that Attorney General Reno was protecting the Clintons. To prove his point, he subpoenaed the FBI's interview notes, known as "302s." It happened that one of the set of notes we received was the FBI 302 for the Republican chairman whose allegations launched the espionage investigation.

Here's what this chairman told the FBI: the so-called "evidence" of espionage came from a Senate staffer the chairman talked to at a congressional reception. This unidentified staffer told the chairman he had heard his information from a Commerce Department employee whom the chairman also could not identify. When the FBI probed about the identity of the

congressional staff, the chairman said he had never met the person before and couldn't even remember his name.

That's the climate we were in then: Even cocktail party gossip could launch major congressional and criminal investigations of the Democratic Clinton Administration.

The total cost of these investigations was enormous. The Congress spent more than $35 million investigating President Clinton. When you combine this figure with the costs of independent counsel investigations during this era, the total cost to the taxpayer of investigating President Clinton exceeded $150 million.

Not let's jump forward to 2001. With the election of President Bush came a sea change in congressional oversight. During the Clinton years, hearsay at receptions could trigger major investigations. But under President Bush, even major scandals are regularly ignored by Congress.

Earlier this year, I released a report listing subjects on which Congress has failed to conduct meaningful oversight. It's a long list.

Congress has not investigated whether White House officials misrepresented intelligence on Iraq to make the case for war.

Congress has not investigated the responsibility of senior Administration officials for Abu Ghraib and abuses of detainees.

Congress has not investigated the secret NSA wiretaps, the politicization of science at federal agencies, conflicts of interest at multiple departments and the White House, or the Justice Department's failure to enforce the Voting Rights Act.

Here's a striking example: During consideration of the Medicare prescription drug bill, the White House told Congress that the legislation would cost $400 billion. At the time, the actuary at the Department of Health and Human Services, Richard Foster, had a much higher cost estimate. But when members of Congress asked for his estimates, Mr. Foster was told that he would be fired if he provided this information to Congress. That's a violation of federal law and gross distortion of the legislative process. But there has been zero investigation by Congress.

Or consider the following: When President Clinton was in office, Congress took over 140 hours of deposition and hearing testimony to see whether the White House misused its holiday card database for political purposes. But in the last Congress, the House held less than 10 hours of public hearings investigating abuses at Abu Ghraib and other detention centers.

During the Bush Administration, congressional committees have neither sought nor used deposition authority to investigate Administration officials. And I am not aware of any congressional subpoenas issued by a Republican chairman to the Bush White House.

The exceptions to this trend have been few and far between. As I mentioned earlier, the Chairman of my Committee, Rep. Tom Davis, is one exception. Last spring, Chairman Davis and I jointly requested executive branch audits relating to the procurement practices of the Department of Homeland Security. This resulted in a joint report that we issued in July that found widespread waste and abuse in homeland security contracts.

Overall, however, there can be no question that congressional oversight has gone from one extreme to the other. The Republican-controlled Congress relentlessly hounded the Democratic Clinton Administration with no sense of proportionality or judgment. But as soon as President Bush was elected, oversight vanished and deference to the White House became the guiding principle.

Unfortunately for the nation, it is not just Congress that has been missing in action over the last five years. Other investigative bodies have also not been as aggressive as they should be.

The independent Inspectors General have a key oversight function. Without question, several IGs have done exemplary work. Clark Kent Ervin, who will be addressing you later today, showed great courage and independence as the IG at the Department of Homeland Security. But as a group, the Inspectors General appointed by President Bush are becoming increasingly politicized. Under President Clinton, over 60% of IGs were career auditors or investigators, and less than a quarter had political experience, such as working for Congress or the White House. Under the Bush Administration, these figures have been reversed.

GAO under Comptroller General David Walker has done a good job over the last few years under adverse circumstances. GAO auditors have released a series of important reports on the federal response to Hurricane Katrina, contracting in Iraq, and homeland security. But since 2001, even GAO has been reluctant to investigate the White House.

I used to think that I would never see investigative abuses worse than those I lived through at the Government Reform Committee under Chairman Dan Burton. Wild accusations were commonplace, individuals' rights were abused, and documents were leaked and sometimes even falsified. But the absence of oversight under the Bush Administration has caused more harm than even the worst abuses during the Clinton years.

The lack of oversight from Congress sends a message to the executive branch that there will be no accountability. The result has been a series of phenomenal misjudgments that have led the nation into a quagmire in Iraq, imperiled our reputation throughout the world, and undermined our economic progress at home.

I have no doubt that if Congress were more vigilant, the Administration would have thought twice before misleading the nation about weapons of mass destruction in Iraq. It would have been better prepared for Hurricane Katrina. And it would not have squandered billions of dollars on Halliburton and other contractors in Iraq.

The founding fathers of our nation envisioned a government of checks and balances. The wisdom of their vision has never been more evident than it is today. We've had an imperial presidency and a subservient Congress for the last five years. And the costs to the nation have been enormous.

So how do we move forward? How do we stop this swinging pendulum and find the balanced center? If the Democrats take control of the House after this election, will we be able to avoid the Charybdis of excessive partisanship in our investigations? And if the Republicans stay in power, how do they avoid repeating the Scylla of abdication of oversight?

These are easy questions to pose, but they are not as simple to answer. One key, though, is taking a perspective longer than the next sound-bite or the next day's headlines.

I have no doubt that the Republican leadership believe they have supported President Bush by shutting down congressional oversight. But the reality is, they have actually done the President no favors. If there were more accountability and less secrecy, President Bush could not have steered the nation so far off course in Iraq, and he would not have been able to pursue economic policies so far out of the mainstream. More oversight would have caused President Bush some political pain in the short run, but it would have strengthened him in the long run.

And I have no doubt that the Republican leadership thought the Burton investigations helped Republicans by tarnishing the Clinton Administration. And this was undoubtedly true in the short run. But in the long run, it was Congress that looked petty and partisan and President Clinton who gained in stature.

Regardless of who sits in the chair of this important committee next year, we need to remember that Congress has an important constitutional oversight obligation to fulfill. If Congress uses its oversight powers effectively and judiciously, the nation will be stronger and the Congress will be more successful. And that will be true regardless of whether it is Republicans or Democrats who are in control.

After three decades in office, I know that good congressional oversight is not easy. But I also know how essential it is to the health of nation. Congress cannot continue to allow its oversight agenda to be set by partisan considerations, and we must not repeat the mistakes of the past decade.

In the coming years, our nation faces enormous challenges at home and abroad. I firmly believe we won't succeed in meeting them unless congressional oversight is reinvigorated and the checks and balances on which our system of government depends are restored.