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House of Representatives

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Opening Statement Rep. Elijah E. Cummings, Ranking Member Business Meeting April 10, 2014

Thank you, Mr. Chairman. Before I begin, I want to note that I would like to be recognized at the appropriate time for a motion after Members finish speaking on the resolution.

Today, I do not direct my comments to my fellow Committee Members. Instead, my statement is directed to the generations of Americans yet unborn who will learn about this vote in their history books.

I speak to those who are reading the transcript of today's proceedings 50 or 100 years from now and are trying to understand why Congress—in the year 2014—tried to strip away an American citizen's rights under the Fifth Amendment of the Constitution.

I want them to know that Members of this body believed this vote was a rejection of the Constitutional principles we are sworn to uphold. And I want them to know that I objected.

Let me make clear that I am not defending the actions of Lois Lerner, but rather the protections guaranteed by the Constitution to every American.

Let me also make clear that I wanted to hear Ms. Lerner's testimony. I wanted to know why she did not discover—for more than a year—that inappropriate criteria were being used in Cincinnati. I also wanted to know why she did not tell Congress sooner about these actions.

However, I cannot cast a vote that would place me on the same page of the history books as Senator Joseph McCarthy or the House Un-American Activities Committee. And I do not draw that comparison lightly.

Today, this Committee is trying to do something that even Joe McCarthy could not do in the 1950s—something virtually unprecedented.

Sixty years ago, Joe McCarthy tried—and failed—to obtain a criminal conviction of an American citizen after she professed her innocence before his committee and asserted her right not to testify under the Fifth Amendment.

I want to read briefly from that hearing transcript.

In 1954, Senator McCarthy accused a woman named Diantha Hoag of being a communist. She worked at the Westinghouse Company in a small town in New York, making \$1.71 per hour. And the similarities to today's proceedings are striking.

- Like Ms. Lerner, Ms. Hoag professed her innocence. She said this: "I have never engaged in espionage nor sabotage. I am not so engaged. I will not so engage in the future. I am not a spy nor a saboteur."
- Like Chairman Issa, Senator McCarthy argued that she waived her Fifth Amendment rights, stating: "when the witness says she never engaged in espionage, then she waived the fifth amendment, not merely as to that question, but the entire field of espionage."
- And like Chairman Issa is doing today, Senator McCarthy held the witness in contempt and sought a criminal prosecution.

But the federal court rejected Senator McCarthy's legal theory. The court held that "the defendant did not waive her privilege under the Fifth Amendment" and that she was "entitled to a judgment of acquittal on all counts."

If today's vote were really about weighing these significant Constitutional questions, we would have held at least one hearing with experts on all sides of this debate. I made this request more than nine months ago—last June—but the Committee has never held a single hearing with a single expert witness on these issues.

As of today, a total of 31 independent experts have now come forward to identify fatal flaws in this contempt proceeding. They conclude that the Chairman did not follow Constitutional due process protections.

These are not my lawyers, as the Chairman has said. They include two former House Counsels, three former Supreme Court clerks, and prosecutors and professors from across the country. Significantly, they also include both Democrats and Republicans.

It is the Chairman's prerogative not to hold hearings and not to hear from these experts. But given the significance of this issue and its grave implications for all Americans, I believe we should have. He and I simply disagree on this.

So, today I will vote against this resolution. I do not want to go back to that shameful era in which Congress tried to strip away the Constitutional rights of American citizens under the bright lights of hearings that had nothing to do with responsible oversight and everything to do with the worst kind of partisan politics.

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