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ARTICLE ONE: STRENGTHENING

CONGRESSIONAL OVERSIGHT CAPACITY

Thursday, November 4, 2021

House of Representatives,

Select Committee on the Modernization of Congress,

Washington, D.C.

The committee met, pursuant to call, at 9:01 a.m., in Room 310, Cannon House Office Building, Hon. Derek Kilmer [chairman of the committee] presiding.

Present: Representatives Kilmer, Perlmutter, Williams, Timmons, Davis, Latta, and Joyce.

The Chairman. The committee will come to order.

Without objection, the chair is authorized to declare a recess of the committee at any time. I now recognize myself for 5 minutes for an opening statement.

So Article I of the Constitution animates every aspect of this committee's work. Our hearings have focused on what steps we can take to restore Congress to its rightful place as first among coequal branches of government, and our recommendations have addressed the various problems and challenges that we have uncovered.

From day one, the committee's guiding principle has been to make Congress work better for the American people. We have sought to understand how and why Congress' ability to uphold its Article I powers have been weakened so that we can find meaningful and lasting ways to rebuild capacity and strengthen the legislative branch. Today's hearing continues this work and puts that Article I power recognized by the Supreme Court is fundamental to congressional operations in its power to conduct oversight.

Since World War II, under Presidents of both parties, executive branch has expanded tremendously in both size and scope. Between 1946 and 1997, an average of eight new agencies were created each year. And while there is no official count of all Federal agencies, one recent estimate puts the current total at 278. That is 278 agencies full of policy and budgetary experts charged with carrying out Federal law.

Executive branch expansion, along with huge increases in Federal spending, have undoubtedly intensified the need for rigorous oversight. There is no question that this boom in executive power tests the policymaking authority of Congress. The House's 21 standing committees and the Senate's 24 do an amazing job, but monitoring the work of every agency is a monumental task, and this task is made more difficult when the

executive branch slow walks or denies congressional requests for information that Congress is constitutionally entitled to obtain.

There is nothing inherently partisan about oversight. Timely access to the information that Congress needs to fulfill its constitutional obligations is in the interest of both parties. I know our witnesses today have some recommendations for fast tracking requests, and I look forward to that discussion.

The oversight process is not just about holding the executive branch accountable, it is about how Congress comes to understand policy successes and failures. In order to legislate smarter on behalf of the American people, Congress needs to know whether the policies and programs it authorizes and funds are working as intended.

Oversight provides members with the information and agency-level feedback they need to make sound legislative and fiscal decisions. The experts joining us today have a lot to say about what Congress can do to strengthen its oversight capacity, and I am looking forward to hearing their ideas and recommendations.

The committee will once again make use of a roundtable format to encourage thoughtful discussion and the civil exchange of ideas and opinion, so we are ready. In accordance with clause 2(j) of House Rule XI, we will allow up to 30 minutes of extended questioning per witness. And without objection, time will not be strictly segregated between the witnesses, which will allow for extended back-and-forth exchanges between members and the witnesses. Right?

Vice Chair Timmons and I will manage the time to ensure that every member has equal opportunity to participate. Any member who wishes to speak should signal their request to me or Vice Chair Timmons. Additionally, members who wish to claim their individual 5 minutes to question each witness pursuant to clause 2(j)2 of Rule XI will be permitted to do so following the period of extended questioning.

All right. I would like to now invite Vice Chair Timmons to share some opening remarks.

[The statement of The Chairman follows:]

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Mr. Timmons. Good morning. Thank you all for taking the time to come be with us here today. I think this is an extremely important issue. Really, in the last 20 years, we have seen a hyper partisanship, and it is -- we have talked a lot about it in terms of civility, because I do think that depending on what party is in the White House, what party is in the Congress, Oversight Committee becomes just a huge bomb-throwing committee and they are really not doing their job.

I am going to go ahead and tell you that if in the next decade, the one party is in the Congress and the other party is in the White House, they are probably not going to be legitimately doing the things that they ought to be doing. And so the question then becomes what do we need to do to make changes to actually reinstitute the purpose of the role of Congress as it relates to oversight, as the chairman just said, both learning and holding them accountable. So part of that is civility, I think, and we have talked a lot about that, but I think you will have a lot of additional information that we can learn from on the subject and I am looking forward to hearing more about it.

But I am going to go ahead and throw out one thing. I had a meeting yesterday with somebody that started his career on the Hill in 1974, and it was very interesting. He was on the Appropriations Committee for a while, and he proposed the idea of not even having an Oversight Committee because every -- any committee has an Oversight Subcommittee, and that was an interesting thing that I had never thought of before.

So we are going to have a lot of interesting ideas that we are going to be talking about. I just wanted to throw that one out early. But I look forward to your testimony, and with that, Mr. Chairman, I yield back.

[The statement of Mr. Timmons follows:]

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The Chairman. Thank you.

I am honored to welcome our three witnesses joining us this morning.

Witnesses are reminded that your written statements will be made part of the record.

Our first witness is Josh Chafetz. Dr. Chafetz is a professor at Georgetown University Law School. Prior to his current position, he spent 12 years on the faculty at Cornell Law School. His research interests include constitutional law, American and British constitutional history, legislation and legislative procedure, and the intersection of law and politics. His recent book, "Congress' Constitution: Legislative Authority and Separation of Powers," explores how Congress uses the various tools at its disposal during conflicts with other branches of government.

Dr. Chafetz, you are now recognized for 5 minutes.

STATEMENTS OF JOSH CHAFETZ, J.D./PH.D., PROFESSOR, GEORGETOWN UNIVERSITY LAW SCHOOL; ELISE BEAN, J.D., WASHINGTON DIRECTOR, THE LEVIN CENTER, WAYNE STATE UNIVERSITY LAW SCHOOL; AND ANNE TINDALL, J.D., COUNSEL, PROTECT DEMOCRACY

STATEMENT OF JOSH CHAFETZ

Mr. Chafetz. Thank you very much. Chairman Kilmer, Vice Chairman Timmons, and members of the committee, thank you for the opportunity to testify today regarding the vitally important topic of congressional oversight. Although not explicitly mentioned in the text of the Constitution itself, oversight has been understood from the earliest days to be not only a constitutional power but a constitutional duty of the Houses of Congress.

Following the 18th century British House of Commons, members of the founding generation described Congress and especially the House of Representatives as the grand inquest of the Nation with a special duty to, in Founding Father James Wilson's words, "diligently inquire into grievances arising from both men and things."

This duty was exercised from the earliest days with the House conducting a major investigation in 1792 into the defeat of an Army force under General Arthur St. Clair by a confederation of Native American tribes at the Battle of the Wabash, an investigation that resulted in the passage of corrective legislation.

Oversight power became increasingly important, as the chairman noted, with the growth of the administrative state, beginning really in the late 19th century and accelerating into the first half of the 20th century. And Congress recognized this in various ways, including in the 1946 Legislative Reorganization Act's mandate that standing committees exercise continuous watchfulness of the agencies within their jurisdiction, the creation of the House Oversight Committee and Senate Permanent Subcommittee on Investigations, and the growth and professionalization of member and committee staff and the congressional support agencies. It was also during this period that the Supreme Court issued its most important opinion blessing a broad power of congressional oversight in *McGrain v Daugherty*.

The recent years have seen congressional demands for information repeatedly stymied by the George W. Bush, Barack Obama, and especially Donald Trump administrations, and that experience has pointed to the limits of the methods that the congressional chambers have been using to enforce their demands for information.

In particular, the last decade and a half have made clear that Congress cannot and should not make itself reliant on the courts to help it get information out of an unwilling executive. When it comes to the criminal contempt mechanism, administrations have

repeatedly declined to prosecute their own officials. And when the House has filed civil suits to secure testimony or documents, those suits have taken so long to resolve that even when the chamber nominally wins the information gets produced far too late to help that Congress oversee that administration.

Conflicts from the George W. Bush administration were not settled until President Obama was in office; conflicts from the Obama administration weren't settled until President Trump was in office; and a number of the conflicts from the Trump administration remain pending before the courts today.

In essence, simply by bringing a dispute to court, a congressional chamber is effectively giving up on forcing information from the executive on a useful timeframe. Fortunately, Congress does have other tools at its disposal for forcing information from the executive branch.

And I would like to suggest that the chambers would be well advised to think about how the power of the purse can be used in the service of oversight. Money can only be dispersed from the Treasury pursuant to statute, and every part of the executive needs money to function. This gives Congress significant leverage that it can use to pressure the executive to cooperate with information demands.

The simplest and in some sense crudest version of this is purely retrospective: If an administration stonewalls an information demand, then Congress makes it pay in the next appropriations cycle, perhaps by slashing funds for a misbehaving agency or even zeroing out the salary of a contumacious official. One can then take this sort of simple case and begin to add complexities to make it somewhat less crude.

So, for example, consider a change to House rules that would create a point of order against any appropriation to pay the salary of anyone who had been held in contempt by the House and hadn't purged that contempt. Now, of course, the point of

order could be waived, but it would change the baseline, right. A simple application of the rules would withhold the official's salary, and anyone wanting to pay it would have to take an affirmative vote to do so and explain that.

But consider the use of oversight riders: Certain appropriations could be paired with riders requiring the provision of information to Congress on a timely schedule. This was used to some extent in the CARES Act a couple years ago. Failure to provide that information could automatically trigger cuts either to the underlying appropriation itself or to the salaries of the noncompliant firms.

And such riders could make use of non-severability clauses, so that if OLC were to declare, as it has done on a number of occasions, that the rider was unconstitutional, that would lead to the loss of the underlying appropriation as well that is putting some pressure on OLC to be more restrained in making those sorts of determinations.

Those suggestions I have just made rely on the threat of withholding funds to secure cooperation with oversight, and I do think that is a very potent threat. But I also want to suggest one way that Congress might spend money to better facilitate oversight and that is by engaging in capacity building.

As this committee well knows, staff number, staff tenure, staff pay, and staff training are all in need of more resources. This is true at both the member and committee level and even more so in the case of the support agencies like GAO, CBO, and CRS. This committee has already recommended increases in funding for congressional capacity, and the fiscal year 2022 leg branch appropriations bill passed by the House is a good start, but more could certainly be done on that front as well.

Oversight is one of Congress' most important functions, and it is under threat and has been for several decades now. Creative thinking about methods of enforcing information demands is sorely needed, and I submit to this committee that the

appropriations process has the potential to offer some serious solutions. Thank you very much.

[The statement of Mr. Chafetz follows:]

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The Chairman. Thanks, Dr. Chafetz.

Our next witness is Elise Bean. Ms. Bean is the Washington Director of the Levin Center at Wayne State University Law School. From 1985 to 2014, she worked for Senator Carl Levin, including 15 years at the Senate Permanent Subcommittee on Investigations.

Ms. Bean was appointed PSI staff director and chief counsel in 2003 where she handled the wide range of investigations hearings and legislation. In 2014, after Senator Levin retired and the Levin Center at Wayne Law was established in his honor, she joined the center to work on strengthening legislative capabilities at the Federal, State, local, and international levels to conduct investigations and oversight.

Ms. Bean, welcome back. You are now recognized for 5 minutes.

STATEMENT OF ELISE BEAN

Ms. Bean. Thank you so much. Seems to be all right now. How about that? Okay. I think I am all right. All right. So we will get further away.

Well, thank you so much for this opportunity to talk about strengthening Congress' Article I powers to do oversight. As people have mentioned, oversight is key to enacting the constitutional system of checks and balances, and it is key to getting the information that Congress needs to do its job.

My prepared statement has a whole menu of things that could be done large and small to try to strengthen congressional oversight authority, procedures, staffing, but I would like to concentrate on just one particular recommendation that has to do with the ability of Congress to issue legal opinions on oversight issues.

As we know, for decades, the executive branch has been able to issue legal opinions through the Department of Justice Office of Legal Counsel, and they have issued a whole bunch of them on oversight issues. For example, they have said that presidential aides are absolutely immune to congressional subpoenas.

I don't know of anyone in Congress who agrees with that, and the few courts that have looked at that issue haven't agreed that such an immunity exists either; and yet, Presidents on both sides of the aisle have taken that position and continue to take that position. Congress has no ability to issue its own legal opinion as a whole as an institution explaining why such immunity should not exist. We don't have that mechanism right now.

In the last Congress, this committee recognized that weakness and said that Congress needs to strengthen its hand in court. And I know that the committee is considering this Congress to send a letter to the GAO asking them to do a study, but how exactly would you do this? How would you set up an office that allows Congress as a whole to issue legal opinions? Should they be done by the House and the Senate separately? Should there be bicameral opinions?

I think they would not be worthwhile unless they were bipartisan and they contained careful legal analysis. How would you staff that office? How would they draft those opinions? How would they finalize and approve those opinions? Those are all difficult questions but they can be worked out.

Some people think, well, you are never going to have the two sides agree on anything, much less the two Houses, and yet, I would submit that there are a lot of areas where consensus is possible, one being obviously that presidential aides are not absolutely immune to congressional subpoenas and don't even have to appear at a congressional hearing when called.

Executive privilege might be another area, requiring the President, if he wants to withhold documents, has to have a list of those, a privilege log that has to be given to the committee that has asked for the information.

Another area, minority requests. Right now, there is an opinion that is within the Office of Legal Counsel that says if a ranking member of a committee requests information, the agencies can simply ignore it. I think both sides of the aisle would agree that minority members, ranking members of committees, aren't going to be able to get information as well. So there are a lot of areas where bipartisan, bicameral agreement is possible if we set up a procedure, an office, mechanism to get those issued, and we haven't done that right now.

I would like to also offer just one other thought from the menu of possible options, and that is enforcing -- getting better civil enforcement of congressional subpoenas in court. Josh is absolutely right that it has been very difficult over the last few years, processes almost broken down, and there are a lot of things that Congress could do to improve it.

There is a bill that has been introduced, the Protect Our Democracy Act, title 4, that actually had some bipartisan language that has been worked out. I think it is pretty good language, and I would encourage this committee to take a look at it -- it was developed with Congressman Issa, among others, so it is bipartisan -- and to think about endorsing that approach in that bill to title 4.

So thank you very much for your attention, and I am available to answer your questions.

[The statement of Ms. Bean follows:]

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The Chairman. Thank you, Ms. Bean.

And our final witness is Anne Tindall. Ms. Tindall is counsel at Protect Democracy where she leads a team to secure accountability for abuses of power and counter antidemocratic activity at the Federal and State level. Prior to joining Protect Democracy, she served as assistant general counsel for litigation and oversight at the Consumer Financial Protection Bureau. She has also served as counsel to the House Committee on Energy and Commerce.

Ms. Tindall, you are now recognized for 5 minutes.

STATEMENT OF ANNE TINDALL

Ms. Tindall. Chairman Kilmer, Vice Chairman Timmons, members of the select committee, thank you for the opportunity to testify at this timely hearing.

At Protect Democracy we work to prevent and respond to threats to our democratic system for those acutely concerned with presenting abuses of executive power and reinvigorating Congress' ability to function as an effective check on the President, which requires being able to compel compliance with this demand for information.

Today I will address two opportunities for strengthening congressional oversight capacity. This morning, my written testimony goes to many more. First, modernizing Congress' subpoena compliance tools, and, second, ensuring access to sensitive information by congressional staff.

There are three ways in which Congress can force the executive branch to comply with its oversight demands: Civil contempt litigation in the courts, inherent contempt,

and the criminal contempt of Congress statute. I want to highlight the first two of these for you this morning.

For most of the century, Congress has primarily sought subpoena compliance from the executive branch through civil litigation, but as the previous two witnesses highlighted, that path has failed to meet Congress' oversight needs. Oversight requests issued in one presidential administration often span several administrations and certainly span several Congresses.

As Elise Bean referenced, the Protect our Democracy Act, of which several members of this select committee are cosponsors, seeks to address this deficiency by expediting judicial consideration of congressional subpoenas and creating a cause of action for their enforcement to eliminate jurisdictional disputes that slow courts down.

The expedited procedure would have civil contempt suits heard by a three-judge panel convened at Congress' request and reviewable only by direct appeal to the Supreme Court. Protect Democracy urges enactment of these measures.

If there is one thing you take from my testimony today, I hope it is that PODA is necessary -- PODA, Protecting Our Democracy Act -- is necessary but not sufficient to address Congress' oversight needs. Civil litigation, no matter how expedited, often will be too slow for consideration of sensitive and voluminous information requests, and it hands decision-making authority to the courts, which have never given Congress an unequivocal win at disputes with the executive branch.

By all means, send PODA to the President's desk, but you can't stop there. The executive branch has learned that it can slow walk response to oversight demands and watch the courts run out the clock. Congress must get the executive branch back to the negotiating table, and the best way to do this is by invoking inherent contempt powers.

This used to mean sending the Sergeant at Arms to arrest and imprison holders of

information until they complied. While the Supreme Court has upheld this means of effecting compliance, it is likely both practically and politically today.

But a system of fines of contempt could modernize Congress' inherent contempt powers and turn them into a credible lever for compliance. And unlike expedited civil litigation, it could be effected simply through a change in the House rules. The congressional inherent contempt power resolution introduced in May would do just that.

Finally, Congress should act on the compensation, training, and technology recommendations the select committee issued in the last Congress and also consider increasing the number of congressional staff with access to top secret, sensitive compartmented information security clearances.

At a minimum, the House should allow all Members of the House Permanent Select Committee on Intelligence to hire a staffer with such a clearance, as their Senate counterparts may. This would ensure that members have staff to support effectively in their oversight of the Federal government's most sensitive and consequential programs.

I want to close with a compliment and a warning. The most important thing Congress could do to strengthen its hand in oversight is to follow the example set by this committee, which has committed itself to work collaboratively in supporting Congress as an institution. This, as you know, is not the way Congress always works.

Across Democratic and Republican administrations, the executive branch vigorously defends its interests and adheres to an increasingly radical vision of executive power, unrestrained by Congress. As long as legislators act first in the interest of their political party rather than the institutional interests of Congress, Congress will lose battles against Presidents who stand shoulder to shoulder defending the recalcitrants of their predecessors. Our system of checks and balances, the foundation of our democracy, requires that Members of Congress also stand shoulder to shoulder in defense of the first

branch's constitutional authorities.

Thank you, and I look forward to your questions.

[The statement of Ms. Tindall follows:]

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The Chairman. Thank you, Ms. Tindall.

I want to now recognize myself and Vice Chair Timmons to begin a period of extended questioning of the witnesses. Any member who wishes to speak should just signal their request to either me or Vice Chair Timmons.

So, I guess, one of the things I wanted to ask about was much of your testimony appropriately was about where the executive branch basically isn't playing ball. I want to actually just take a step back and look at how the legislative branch approaches oversight.

You know, Vice Chair Timmons in his opening statement sort of spoke to, you know, I think there is almost two kinds of oversight in this place. There is the kind of gotcha oversight where the party that controls Congress, if the executive branch is under a different party, it is about kind of really trying to get headlines, trying to embarrass that administration politically.

You know, and then there is the day-to-day sort of oversight of the administrative state, where you are trying to make sure that policy decisions that have been made are efficient and effective, you are trying to make sure taxpayer's dollars are being spent appropriately.

I want to get your assessment, one, of how Congress does on that second piece, and if there is things that you think our committee ought to be thinking about recommending to incentivize more of that second type of oversight or make more effective that second type of oversight.

I am sure members of the committee will have questions about the kind of stalemate between the executive branch and the legislative branch, but I kind of want to take a step back and just start with, how is the legislative branch doing? Go ahead.

Ms. Bean. So at the Levin Center, we do a lot of work on oversight, and actually bipartisan oversight is alive and well. It is not covered by the media. And I say to my reporter friends, are you going to cover this great bipartisan hearing that is impacting the real problem? They are like, no.

So the only things that people see, that the media covers, have a partisan -- and actually there is enormous amount of bipartisan oversight going on all the time. And it is not even on the committee level. Sometimes it is individual members. I remember a report that came out of Congress years ago --

The Chairman. Oh, you may have to use a mike. I am sorry. You can try yours again if it is not possessed.

Ms. Bean. Yeah, let me try that.

The Chairman. Yep, still possessed. Let's borrow Dr. Chafetz's.

Ms. Bean. Okay. I apologize for not turning that on. But I was just going to say, I remember a report that came out --

The Chairman. Yeah, I would use that one, yeah.

Ms. Bean. -- years ago from a Democrat and Republican office that looked at pain relief issues and the World Health Organization. These two offices had no subpoena authority, they didn't have a committee, they simply looked at documents that had come out of litigation. They looked at the pain relief recommendations of the World Health Organization and showed over time how the World Health Organization had taken on the same policies as Big Pharma and opioids.

They put out a report disclosing this. The World Health Organization responded by withdrawing their pain relief recommendations, which had recommended very strong opioids very early in the process, and that was just two offices working together on oversight. So my answer is, there is a lot of good-faith, bipartisan, fact-based oversight

that goes on right now.

As for what you can do, we have a couple of suggestions, sort of soft suggestions. One is trying to popularize the idea of making a public commitment to bipartisan oversight. So you just announce publicly at the beginning of an investigation, we are going to do this together.

And that worked for the Permanent Subcommittee on Investigations. We regularly did that. And our bosses instructed the staff to work together, and guess what? We did. When your boss tells you to do it, you do it. And that -- maybe you could develop a model statement or just popularize the notion of having a public commitment to bipartisan oversight.

Another idea that we have suggested is have fewer hearings on less partisan topics. Right now there is so many hearings that go on, people have a tough time even tracking all of the intricate issues that are going on. And the more partisan the issue, often the less productive the hearing, the less progress you make. So that is another idea.

And the third idea that we suggest is increasing social interaction. On the Permanent Subcommittee on Investigations' staff had a running cocktail party every 2 weeks, and weren't allowed to talk about work. You could just talk about -- if I in the past or, you know, just sort of the chitchat that goes on with people that work together. We found that that social interaction -- we also took photographs of the teams that work together on a bipartisan basis on each investigation. We found that that social interaction and those photographs did more for our committee than almost anything else. So those are just a couple of ideas.

The Chairman. Thank you.

Mr. Chafetz. If I could just follow up on that. So Elise is exactly right about the

tremendous amount of bipartisan oversight that actually does go on, and the Levin Center has done tremendous work tracking that. And it is consistent with a small but real body of political science literature that suggest that there is still a fair amount of bipartisan oversight that happens.

I think, you know, it is wonderful to the extent that that is possible. It is also, I think, worth stepping back and perhaps saying that bipartisan doesn't always mean good, and partisan doesn't necessarily mean bad, right.

So one reason that certain things are partisan issues is simply because there are ideological disagreements about what it means for some part of the executive branch to be doing a good job or a bad job. And if there is disagreement about that, and in an increasingly sort of partisan, polarized age, that disagreement is likely to track party lines, then we actually should expect to see the parties taking a different view on oversight of that particular part of the executive branch.

And sort of further than that, you know, oversight is one -- so, you know, the two kinds of oversight that you mentioned at the beginning, right, the sort of -- you called it gotcha. I would perhaps use a less pejorative term, but the sort of gotcha on the one hand and the day-to-day on the other in some sense could also be separated out as, you know, the day-to-day oversight being oversight of things that are perhaps lower level down in the executive branch whereas a lot of the gotcha or sort of more communicative or performative uses of oversight tend to be things that are closer up to the White House level, right.

And it is actually an important function that Congress serves as a way of pushing back against presidential power that when another party controls one or both of the Houses of Congress that they actually do serve as a sort of rhetorical counterweight.

So we tend to forget that a lot of the earliest committee hearings surrounding

Watergate were on party lines. By the time you get closer to the House Judiciary Committee reporting out the impeachment articles, it was somewhat bipartisan although not all that bipartisan. But at the very beginning they are party-line votes in the House Judiciary Committee.

So I don't think that partisan oversight is necessarily a bad thing. I think bipartisan oversight when it can be made to work and when it is appropriate is a good thing, and I share Elise's recommendations on that. But I wouldn't want us to say that just because something is happening on party lines that necessarily makes it a bad thing.

The Chairman. Ms. Tindall, do you want to take a swing at this pitch too?

Ms. Tindall. Just one short comment here. I agree with Professor Chafetz that partisan oversight does not have to be an empty affair, but I do think some of the recommendations this committee has made over the structure of oversight hearings could reduce the sort of gotcha feeling that we all get when we watch these hearings and have the conversation go back and forth ping-ponging between what is made largely for YouTube, for social media, and less for engaging with the witness.

To get the sort of productive and really effective oversight you want, both on the bipartisan oversight on, you know, issues where there can be agreement and even where there are ideological disputes and there may be conflict, being able to actually engage with the witness in extended period of time, not, you know, the sort of 30-minute questions, perhaps even handing questioning over to staff who have really mastered all the facts of the investigation and can offer followup questions and the like could lend substance to the hearings that now often feel more full of finger pointing.

The Chairman. Vice Chair Timmons.

Mr. Timmons. Thanks, Mr. Chairman.

I have been doing a lot of research while we have been sitting here. So the

House has both the full Committee on Oversight and Government Reform, and it has at least seven subcommittees for E&C; Financial Services; Homeland; Natural Resources; Veterans Affairs; Ways and Means. The Senate, interestingly, the word "oversight" only appears one place in all of their committees and subcommittees.

My time in the House, in my just life experience, would lead me to feel that maybe -- well, I feel like a lot of the things that the House does -- again, this is on both sides of the aisle at different points in the last 30 years -- have devalued the purpose of our ability to actually engage in oversight in the House. Is the Senate doing it better, or there are fewer of them? It is harder to tell a Senator no? I don't know. Talk me through your -- the difference between the two, whoever wants -- whoever knows the most about it.

Ms. Bean. So I don't think the Senate is doing better than the House. Just whether you call something oversight or not doesn't really, you know, control whether somebody is doing oversight. And there is this law that now requires every committee to do oversight as part of its work. You are not just supposed to produce laws; you are also supposed to produce oversight. And, of course, the two go hand in hand, because how do you know what a law should look like, how it should function, if it should be modified unless you get more information?

You raised an earlier question about why do we need a general Oversight Committee, why not just leave it to each of the authorizing committees. And the answer to that is, all of those other committees have a lot of legislative responsibilities. An Oversight Committee is less about legislation and more about fact finding.

So I worked on the Permanent Subcommittee on Investigations. We had no legislative authority at all. We had nothing to do with passing laws. We were only about fact finding. And one of the things we looked into was money laundering. Why

did we do that? The Senate Banking Committee had a lot of legislative responsibilities. They never had time to get to money laundering. They just didn't have time on the order of their priorities, and I couldn't argue with them. They had more important things to do than money laundering. And, yet, that is a really serious problem in a whole variety of ways. And so we spent time doing that money laundering and then eventually we helped to produce a bill, but then it went to the banking committee that then considered it and eventually passed it.

So that is one reason you have an Oversight Committee so that they can function, take on that constitutional responsibility that Members of Congress are not just about legislating, they are also about figuring out how the government is working, how can we improve it.

Mr. Timmons. In your experience, do authorizing committees facilitate or help the full committee on oversight with its pursuit of information? I mean, theoretically they are going to have better relationships, better subject matter experts, and they might be able to more effectively pursue information. Is that something that happens or are they pretty separate?

Ms. Bean. Occasionally it happens. Occasionally an Oversight Committee will go to, say, the Armed Services Committee, can you help us get this information from DOD on this particular issue. But a lot of times the full committees are kind of jealous of their relationships with their agencies, and they develop very strong agencies, sometimes even agency capture, and they don't want to help an Oversight Committee that is pointing out problems. So it is a mixed bag.

Mr. Timmons. When the full Oversight Committee pursues information, whether through subpoena or what other the mechanism may be, does it ever happen that they go to the subcommittee on the authorizing committee and request to do a joint request

as opposed to just -- I think that would be stronger. Is that something that --

Ms. Bean. Yes, it would be stronger. And I think people try to do that wherever they can, and you will see joint letters and requests for information.

I think one of the big things about oversight, what distinguishes an oversight hearing versus a legislative hearing is it is more about fact finding as opposed to evaluating legislation. And fact finding, I mean, we found on PSI that if you fact find with somebody who has the same world view as you, generally agrees with you, you don't challenge each other. You miss a lot of facts. You just don't get it right.

It is only when you investigate with people who have fundamentally different views than you have that you start to look at more facts, you are more critical about them, you challenge each other. And at the end of the process your results are usually more accurate, more thoughtful, and certainly more credible because you had a range of views in the process.

I think the Oversight Committees really take that to heart and when they are doing bipartisan oversight to try to use those disparate views to come up with a better set of facts that you can then use to think about what you should do about the problem.

Mr. Timmons. One last question. Dr. Chafetz, you talked about using the power of the purse to better engage in oversight. I really like that idea, but, I mean, at the end of the day, I feel like it is probably going to be very challenging. Obviously we have lived in CRs for forever and then, you know, you are going to have to figure out getting the Senate and the House to agree. And, I mean, talk me through that a little more. I mean, is that a great idea that probably will never work? But, I mean, expound on it, please.

RPTR BRYANT

EDTR HUMKE

[9:40 a.m.]

Mr. Chafetz. So part of the sort of intuition it calls on is that appropriations must pass in some sort of central sense. And so the basic idea is that if, you know, one House or the, you know, Appropriations Committee of one House feels very strongly about a particular rider that there is a decent chance they can get that into the final bill, because what is the alternative, right, if you are actually willing to sort of insist on that being in a final appropriations bill.

And I am just going to back up for a second to the question of CRs now. If you are willing to sort of insist on that rider being in a final appropriations bill, the other Chamber, either by refusing -- either the other Chamber by refusing to go along with the President by threatening to veto is essentially threatening to defund, you know, a 12th of the Federal Government.

And so there is -- you know, a House that is willing to really insist strongly on that could actually I think get a lot of those riders through. It wouldn't always win the fight, but it might win the fight. It would have to think sort of carefully about the sort of political optics of doing it as well, right?

Obviously, just because you are having a fight with, you know, the Department of Agriculture doesn't mean you want to defund the Department of Agriculture, but it might mean you go after sort of targeted officials, or if you have a situation where, say, you think the White House Counsel's Office is, you know, telling the President, hey, you don't have to respond to any oversight demands from anyone ever, maybe the American people don't need to be paying for the White House Counsel's Office in that moment,

right?

So I think there are sort of targeted things that the House could do that it could insist on. Now, that becomes harder as the sort of normal appropriations process breaks down, right? So part of what I would advise -- and I gave this testimony to the Budget Committee last year -- is it is important to try to return to regular budgeting order. It is important to try to bring back that process, because that is the way that the Houses of Congress exercise finder and control over not just spending but a whole host of issues that are collateral to --

The Chairman. I want to call on Mr. Latta, but can I just pull that thread real quick. So it is also hard because it is a really partisan place, right? How do you prevent sort of gaming of that, right? Like, whatever party is in charge in Congress has agencies they love and agencies they don't love so much.

So how do you keep -- if you go that route of withholding funds, how do you make sure that a legislative party that is in power doesn't say, I am going to ask for something ridiculous from this agency to squeeze their budget?

Mr. Chafetz. And to some extent, that is the congressional power of the purse, right? That when people who are sort of more sympathetic to certain government functions are in control, they tend to fund those government functions and defund the ones that they are less sympathetic to.

So, to some extent, that is a problem that is not sort of specific to oversight, but is really endemic to the idea of congressional control over spending. But I think the check on sort of specific demands here is a political check. It is that ultimately when you are doing these things, you are setting up a political fight. You are setting up a confrontation with the other House, with the Presidency.

And so you have to be able to go out in public and make a plausible claim for why

you should win that fight, in the same way that, you know, when these fights have gotten out of hand and we have gotten to lapses in appropriations, right, what ultimately settles those lapses in appropriations is some sense that one side or the other is losing the public fight, and that side then eventually caves.

So I think ultimately, the check has to be that you have to be able to go out and defend what you are trying to do.

The Chairman. Mr. Davis.

Mr. Davis. Mr. Latta.

The Chairman. He left.

Mr. Davis. Even better. That is great. That happens to make this place work better when your colleagues in front of you just step out at the exact right time.

Look, I love the recommendations you all have. The power of the purse, great. I would love to get back to our approps process. And, as a matter of fact, we are trying to teach the next generation about the appropriations process.

I got a tour of a new exhibit in the Capitol Visitor Center not too long ago where they have an interactive table where, when we open this place up again and people can start coming here again, they are going to be able to argue and debate the 12 appropriations bills.

Well, my staff director asked the question, where's the CR button? Because, frankly, that is where we are at right now. We can talk in philosophical terms about what worked and what didn't, but this place has never been more of a hot political temperature. In my time as a staffer for 16 years and my time now 9 years as a Member of Congress, I have never seen it this bad.

And we have had committees like the committee I lead, House Administration for our side, swear in witnesses. Never done it before. I mean, the dirty little secret is if

you testify, you are already swearing in anyway. You are already saying you are not going to lie to us. So don't lie, we will come after you. We will jointly exercise our oversight responsibility if you say anything untrue today.

But social media, you want that news pop, want to be able to get out there. And I noticed there hasn't been a discussion about how our normal media environment, other than the fact that you are absolutely right, Ms. Bean, that the media doesn't want to cover us talking about things where we agree. They just want to see me punch Perlmutter, which could be in about 5 minutes, you know, because he is a Broncos fan. They are terrible.

But in the end, what does that have to do? How can we get back to better bipartisan oversight, because everything you all say is great, but, I mean, the only hope I have is that we have gotten better, because I remember when, you know, I was told Chairman Dingell used to exercise his own oversight when he had proxy capability. We got rid of that in 1995.

Now we are back to proxy voting on the floor. What is the next step, back in committees? No. No. I don't think that will help us whatsoever. And, frankly, I am a little frustrated with proxy voting right now, because it stops somebody like me from going to talk to all of my colleagues about legislative ideas or even oversight ideas that they have, and I think it helps break down the institution and not in a very good way.

Social media, how is that impacting our ability to exercise our bipartisan oversight? I don't care who answers.

Mr. Chafetz. Should I take a quick crack at that? Because I have looked at oversight in a lot of different eras, and it is not clear to me that the fights are particularly more -- are particularly stronger now.

So I have looked at, for example, the Nye committee in the Senate in the 1930s,

which was the Munitions Committee or the Merchants of Death Committee. You look at the McCarthy hearings and the Army-McCarthy hearings in the late forties and fifties. You look at some of the hearings in the 1990s.

These are all different media environments, right? The first one is radio. The second one is television. The third one is internet but presocial media. Now we are in the social media era. And they are all nasty, and they are nasty in different ways. Sometimes the nastiness is cross-partisan, so there are factions of both parties fighting within themselves, and then sometimes it is more partisan.

I would suggest that, you know, to whatever extent we are in a moment of sort of high political passion, the fault isn't with the media and it is not even with -- I mean, there are things that Congress as an institution can do to turn down the temperature in Congress, but the truth is that the American public is more polarized than it has been in over a century along political lines. And if the American public is polarized, we not only should expect Congress to be polarized, in some sense we should want it, right, because Congress is meant to represent the people.

Now, again, that doesn't mean we shouldn't try to figure out ways that where there is agreement or might be agreement forged across those lines that we should do it, but we shouldn't expect sort of agreement across party lines when what we have in the underlying public is the American people that have been getting increasingly polarized since the mid 1960s.

Mr. Davis. Very good point. Somebody else? Yeah, don't waste that. Don't try the middle one again, no matter what he says. We don't listen to him either.

Ms. Bean. I would like to point out that what you are talking about is the norms in Congress, and it is very hard to change those norms. And I think one thing that, you know, it is not a sexy answer, but training, workshops. If you have from the very

beginning for new Members orientation, if they have a session talking about how oversight can bring the parties together, I mean, that is a message that you don't hear very often.

Mr. Davis. You told the right person. We will duly note that for orientation after this next election cycle.

Ms. Bean. And then if there is ever a Members academy, leadership academy. And on the staff level, the Levin Center, working with POGO and the Lugar Center, for 5 years now has been doing staff-level training on oversight, fact-based, bipartisan. We have a hundred applications for each 25 spots that we do. We do it twice a year.

There is tremendous interest in bipartisan, fact-based oversight. And not only that, when you work with the staff, they love it. What we do is we get Democrats, Republicans, House and Senate, we put them on bipartisan, bicameral teams, give them a fake scandal and then take them through the legislative oversight process.

And they find that they can't even tell who is from which party, and they find everybody has good ideas, and they find they can work together. But you don't find that out unless you do it.

Mr. Davis. Right.

Ms. Bean. And workshops are important. Right now, there isn't a single oversight offering from the Congressional Staff Academy. We have been trying to get them to think about it. No luck so far. But I am hoping one of the things that this committee could do is tell the Congressional Staff Academy you have to have something about bipartisan, fact-based oversight.

Mr. Davis. I will tell them right now. You need to have something about bipartisan, fact-based oversight in the Congressional Staff Academy.

Ms. Bean. Or you can just send people to our, you know, oversight boot camps.

Mr. Davis. Where's my team on House Admin? Hey, tell them, all right? Ms. Bean.

Hey, Ms. Tindall, I do have to apologize. I see you worked on Energy and Commerce with my former boss, Mr. Shimkus. I apologize for the many years you had to put up with him. He is in town today, so if you see him tell him I said that too. But what are your thoughts on the media environment?

Ms. Tindall. I think the media environment is not something that we here are going to solve or that you in Congress are going to solve, but I think that what Ms. Bean is describing is a way to build the sort of institutional interest that I was talking about in my opening statement, where you provide staff and you provide Members with ways to get what feels like wins, get what feels like progress and fulfilling work together, and help them to understand that it is the institution of Congress they are representing rather than their political party across all investigations.

You know, certainly not all of our oversight on Energy and Commerce was bipartisan, but a good chunk of it was. And when I look back on the time I spent in Congress as an investigator, it is those bipartisan investigations that were the most successful, that were most likely to lead to reform legislation, and that were most fulfilling to the folks involved.

Mr. Davis. Thank you. Thank you.

One last question, observation I want to talk about and have you all address if you have the opportunity is you talk about minority rights. I really care about minority rights right now because I am in the minority.

And we are learning a valuable lesson about how to create more of a bipartisan work environment in the committees that I serve on. And compared to the years I served when we were in the majority versus the years I have served in the minority, I am

learning a lot.

I don't think it is going to be -- but here is the problem I have: We talk about minority rights. We talk about how do we exercise that bipartisan oversight. This place is based on precedents, right? The precedent has been set by this majority to actually not allow Members of the minority to serve on committees that the minority names them to, be it a select committee or be it a committee. That precedent is going to be taken by any new majority too.

How do we stop that? How do we stop -- how do we get back to a point where the minority rights means being able to appoint their own Members to committees, and then focus on bipartisan oversight rather than focusing on politics? We can make that a Staff Academy one too, if you would like.

Ms. Bean. Well, I think as it becomes more and more clear that the majorities can flip back and forth, each side is going to become a lot more interested in minority rights, because one Congress you are in the majority, the very next one you are in the minority.

When I was in the Senate, I was in the majority and minority back and forth over the years. And so, as you say, you start to gain an appreciation for why the minority is important and why you need two vibrant parties working together to solve problems. So I think there is going to be a fix automatically.

When I saw some Republicans write to the Department of Justice saying, we don't like your legal opinion that Federal agencies don't have to respond to committee requests made by ranking minority members, but hallelujah, right, that is true. And that is another reason why Congress itself needs the ability to issue legal opinions on a bipartisan, fact-based way. That is how you are going to tackle that problem.

Mr. Davis. Go ahead, Dr. Chafetz.

Mr. Chafetz. I am not sure I have too much to add on that except that, yes, you know, precedents can be important, but they also are not sort of determinative, right? The ways in which Members get appointed to committees have changed radically over the course of the history of this institution. And I think you can also sort of distinguish perhaps between a general rule that continues to be operative, right, and a few exceptions.

That said, you know, I think, like everyone up here, I would be very dismayed if the sort of general rule were changed to take away significant amounts of power from each party to [inaudible.]

The Chairman. Did you want to pull on one of the threads from Mr. Davis? Okay. Mr. Perlmutter.

Mr. Perlmutter. Thanks. And just to follow up on Rodney's point on the -- he has a legitimate point on the taking somebody off the committee. You really do. But also, your point is being about the executive branch more or less giving you, you know, the thumbing your nose at congressional oversight.

And I am sorry, I missed your initial remarks, but how do we deal with that? I don't care. It could be could be the Biden administration, you know, talking to a Republican majority saying, sorry, we are not showing up. How do you deal with that?

Ms. Bean. I think, as we have all said, there is a number of things. There is not one silver bullet. One thing is you have to have a strong congressional position, bipartisan, bicameral. There is no such thing as executive branch immunity to congressional subpoenas. And then you use that opinion. You have to go to court. You are going to have to get a court decision.

When we have gone to court, there are two district courts that have considered that opinion, and they both said there is no such thing as absolute immunity. But that is

only a district court. It hasn't gone up the process yet. So you have to set up a way to get better or quicker, better court consideration of these issues.

We talked about Title IV of the Protect Our Democracy Act that has been developed, with bipartisan input, that has some really terrific provisions that could help address this issue. And I think Anne has also talked about inherent -- why don't I just -- there is another option.

Ms. Tindall. Congress' inherent contempt power has been upheld by the Supreme Court numerous times. I don't think that we need to return to arresting recalcitrant witnesses in order to effectuate it. I think that a system of fines that could bring the administration back to the table, bring the executive branch back to the table could be very effective.

And the idea should be, just as with, you know, our Criminal Code, the system of fines will be most effective if it is never used. You know, the goal isn't to fine executive branch officials. The goal is to create a credible threat that forces them to the table to return to an accommodations process that worked for many, many years, but has since broken down.

Mr. Chafetz. I just have one -- you know, one way to sort of effectuate the fines in a way that it does, to a large extent, sort of keep this out of court, at least at the front end, is that when we are talking about executive branch officials, we are talking about people who are drawing a salary from the Treasury, right? You can set up a system of fines so that they simply don't get paid at all. And I think that is why I wanted to sort of emphasize in my testimony the importance of using the appropriations power, the power of the purse more generally.

One area where I do disagree with Ms. Tindall is on the hope of getting this through the courts in a satisfactory way. I think both the timing, even on expedited

procedures, of trying to get these things through the court --

Mr. Perlmutter. It is a rope-a-dope.

Mr. Chafetz. And, frankly, the Federal judiciary has been hostile to Congress for decades. It has been hostile to any kind of assertion of congressional power. You see this as early as the Senate Select Committee case in Watergate. You see it in the Mazars opinion just last year. The Federal judiciary -- the Federal judiciary is pro executive and anti-Congress and it has been for decades, and I think putting Congress' hopes in them is largely [inaudible.]

Mr. Perlmutter. Just one more question, if I could.

So, Dr. Chafetz, you say, well, the citizenry is polarized; therefore, we should be polarized. It is a very fatalistic kind of conclusion. And, I mean, Abraham Lincoln talked about knowing where people are. You can't just say, you know, we really need to get there tomorrow and even though they are way over here. You have got to recognize where they are and lead as you can to a point that is positive, I guess.

And I think what we are trying to do on this committee in these kinds of conversations is to be leaders towards back -- towards the civility, towards the collegiality, towards, you know, coming up with solutions as opposed to arguments and fights.

So, I mean, that is just how I kind of felt by your remarks. And you are right, we are polarized as a Nation. It is more than I have ever seen. But we have a responsibility not to be appeasers, but to be leaders in trying to work together.

We had a funny experience yesterday, Mr. Timmons and I, in the Financial Services Committee, where it had been a completely bipartisan committee. I mean, you couldn't tell whose witness was what. It was on cybersecurity, which is a common concern of all of us. And it was funny, because most of us understood, you know, we

were just trying to get to the elements of the cybersecurity, but the memo didn't quite get to everybody on either side.

So the last couple guys who were asking questions, it was like right out of the message machine, both sides. We turned to each other and said, essentially, I guess they didn't get the memo that this really is a bipartisan committee hearing. I mean, we are so told to stay on message, and that message is a very combative one.

Ms. Tindall. If I could just make one comment on that, Senator Levin did bipartisan oversight for his entire 36 years. And when he was on the Permanent Subcommittee on Investigations, he started off with Susan Collins, had a very bipartisan relationship. Everybody said, well, that is Susan Collins. Then we had Tom Coburn come on our subcommittee, and they all said, you are never going to be able to work with him. They had a wonderful working relationship.

And that is really the good news about oversight is that two Members, the ranking and the chair, can get together. And it doesn't matter what anybody else is saying or doing, they can choose to work together. They can order their staffs to work together. And when that happens in good faith, you find out the facts. Once you find out the facts, you might find out solutions that are acceptable to both sides.

So oversight is an area where bipartisanship really can work, because you just close the doors on what everybody else is doing and have your staffs work together to find out the facts. And that is why this hearing to me is so important.

Mr. Timmons. Can I jump in there real quick? Theoretically, Congress could pass a law that said that if the ranking member and chairman of the Oversight Committee issued a subpoena to a Federal employee and that Federal employee refused to comply, they would be denied compensation until they complied. Could that happen?

Ms. Tindall. I think that would just go to the courts. Whenever you have all of

these things about imposing fines or stopping appropriations --

Mr. Timmons. You could bar them from Federal property. I mean --

Ms. Tindall. You know, but what would the courts do? And would the courts say -- and I don't think they have been uniformly hostile to Congress. When you look at a number of the decisions over the years, they have been very supportive of Congress.

So I think that is why it is -- you don't know what the courts are going to do or what a particular judge is going to do. So I don't know how they would analyze that, if they would say a blanket, you know, whenever you don't comply with a subpoena even if that subpoena is improper in some way.

Mr. Timmons. You can create a 30-day window with an expedited appeals process.

Ms. Tindall. You know, there are all kinds of ideas like that. I know Josh wants to --

The Chairman. But again, I mean, what does that look like? Ms. Tindall, can you say a bit about what an expedited judicial consideration would look like, and how do we legislate that?

Mr. Chafetz. I just wanted to come in on the initial proposal, because I think, you know, one thing that it would accomplish -- you are right, it would wind up in court, because anyone can sue about anything and it can always wind up in court.

But the thing is, you are flipping sort of whose ox is being gored while the process is going on. Right now, the House issues a subpoena. The subpoena gets defied. Then the House sues. Then the case takes 6 or 8 years. And then by the time it is resolved, however it is resolved, everybody has forgotten about it.

If you do something like withholding salary, then, yeah, so the person whose salary has been withheld is going to sue. And while they are suing, their salary is being

withheld. That is an incentive for them to cooperate, and I think that would be [inaudible.]

Mr. Timmons. You could also facilitate an expedited appeals process without taking 6 to 8 years. I mean, you could say, when a congressional subpoena is denied, it takes priority over the docket.

Ms. Bean. So, just so you know, that that is -- how can you legislate that? That is exactly what they have done. They have said that you have to expedite any time there is a congressional subpoena involved. And very cleverly, they also required the Supreme Court and the Judicial Conference to write rules for their courts to follow so that that expedition happens.

Because I think that is very critical. If you don't have rules that are in place, I think it wouldn't happen. That is something new that hasn't been suggested before. As Josh has said, there are all kinds of -- you know, courts kind of ignore the rules sometimes. You are never going to have a perfect system, but there are ways to make it better than it is right now.

Mr. Timmons. Yeah, but do we give the Supreme Court original jurisdiction or remove an appellate process?

Ms. Bean. Well, actually, in the bill what they do is they say, you can request a three-judge district court and then go straight from there to the Supreme Court. So you would skip an entire appellate level, which would save you a year or two. So that is one of the proposals.

Mr. Chafetz. And that is modelled on things like there are certain election law controversies that go straight to a three-judge panel with an appeal to the Supreme Court. You couldn't give the Supreme Court original jurisdiction, at least if we think *Marbury v. Madison* was rightly decided. It says you can't expand the Supreme Court's

original jurisdiction.

But there would be ways to tell the courts to expedite these cases. The question is just what the courts would do with those. The courts have shown such an incentive or such an interest in slow-walking these cases when they don't have to that I am skeptical that you could write a statute that would actually force the courts to decide these things on a really tight timeframe, right, because Congresses only last 2 years.

Mr. Perlmutter. Withhold their pay too. Can I just ask a basic question?

The Chairman. Yes, go ahead.

Mr. Perlmutter. I mean, how we in the legislative branch say to the executive branch, so if somebody in Health and Human Services isn't showing up, do we write a letter to Secretary Becerra and say, you have got to withhold that person's pay, that salary?

We are already at odds with the executive branch. He says, I don't have to follow that. Well, then we are going to withhold all of the money to go to Health and Human Services. Is that how you see this working?

Mr. Chafetz. Well, there is a point at which, you know, if the executive branch simply -- I mean, you know, the Constitution says that no money can be expended from the Treasury except in consequence of appropriations authorized by law.

If the executive branch is willing to ignore that -- and there have been times that it has ignored that -- then we are sort of at a moment where, you know, law has basically run out, right? We are at a moment where the executive branch has just announced that it is willing to behave lawlessly. We are borderline at a moment where there has been a coup.

And I know that is sort of strong language, but I would say that, you know, the power of the purse has been understood from the earliest days as the bedrock of

congressional power. Whatever else it needs to accomplish, it can accomplish that, in part, by using its power of the purse.

And if you have a Treasury that is willing to disburse money when those disbursements haven't been authorized by law or are contrary to an Appropriations Rider, which are exactly the same thing, then you have a situation in which our constitutional order has fundamentally broken down.

Mr. Timmons. [Presiding.] Any final thoughts?

Ms. Tindall. I just wanted to draw out what Professor Chafetz is saying here a little bit and respond to Representative Perlmutter. You are right that we have a challenge in the executive branch following through here.

And, Mr. Timmons, you are right that we have a challenge in effecting the sort of penalties you were discussing, such as, you know, barring someone from Federal property or deducting their salary, because these things depend on the executive branch.

And so I want to point you back to the inherent contempt power, where you could establish a system of fines and a means of executing them through a House resolution. You do not have to depend on the executive and you could enforce it yourselves. And that may be the way that you have to go.

Ms. Bean. I would just like to say there is a whole menu of things that can be done, large and small, in the testimony that we have given you.

I think this idea of sending a letter to GAO to talk about options and recommendations for setting up a system for Congress to actually make up its mind in a bipartisan, bicameral way about certain legal principles is a really important part of that changing norms, deciding how Congress wants to operate. So I recommend doing that.

Mr. Chafetz. Nothing in particular.

Mr. Timmons. We are going to close it out. I would like to thank our witnesses

for their testimony today, and I would also like to thank our committee members for participation.

Without objection, all members will have 5 legislative days within which to submit additional written questions for the witnesses to the chair, which will be forwarded to the witnesses for their response. I will ask our witnesses to please respond as promptly as you are able.

Without objection, all members will have 5 legislative days within which to submit extraneous materials to the chair for inclusion in the record.

This hearing is now adjourned.

[Whereupon, at 10:07 a.m., the committee was adjourned.]