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**Opening Statement of Ranking Member Louise M. Slaughter Offered
During the Rules Committee Legislative Hearing on a Committee
Discussion Draft of H.Res.____, Providing for authority to initiate litigation
for actions by the President inconsistent with his duties under the
Constitution of the United States.**

I'd like to start by welcoming all our witnesses here today: welcome to Mr. Jonathan Turley and Ms. Elizabeth Price Foley, the witnesses for the Majority, and welcome to the Minority witnesses, Mr. Walter Dellinger and Mr. Simon Lazarus. The Rules Committee doesn't often have outside witnesses and for this rare occasion, we have two of the premier constitutional scholars in the United States with us to give testimony for the Minority, and I'm pleased to have them here. In fact, Mr. Dellinger has testified before this committee before so this is a very rare return visit.

Among other laudable achievements, Mr. Dellinger served in the White House as an advisor to the President on constitutional issues in 1993, served as acting Solicitor General, and Assistant Attorney General and head of the Office of Legal Counsel (OLC) from 1993 to 1996. He also knows the drill here: he has testified more than 25 times

before committees of Congress.

Mr. Simon Lazarus is currently serving as Senior Counsel at the Constitutional Accountability Center and served as Associate Director of White House Domestic Policy Staff from 1977 to 1981. He has an extensive background in lawsuits surrounding the Affordable Care Act, and Mr. Lazarus writes frequently for the American Constitution Society, which published several of his issue briefs, including “Mandatory Health Insurance: Is It Constitutional?”, which was released during the Senate health care reform debate in December 2009, and "The Health Reform Lawsuits: Unraveling a Century of Constitutional Law and the Fabric of Modern Government," published in February of 2011.

I’m very pleased that they’ve both agreed to appear here, and I am certain their testimony in the next hour will be stellar and serve as illuminating arguments against this purely political exercise that we have before us.

The jurisdiction of the Rules Committee includes this resolution, and we will be the only committee to hold hearings and mark up this resolution. That gives us a special responsibility to weigh these issues carefully.

This lawsuit is preposterous. It is a political exercise that, if history is our guide, will have little chance of surviving in the courts. It is based on two false premises. *First*, that the President acted outside of his authority with respect to the Affordable Care Act. It is the firm opinion of the Rules Committee Minority that he did not act outside his authority. *Second*, that a lawsuit against the President brought by half of the Congress is possibly the correct way to resolve this political dispute, which it certainly is not.

In fact, if this suit were successful, the result would be to implement the

Affordable Care Act *faster*, which would be contrary to everything the Majority has been fighting and messaging against for the past four years! This whole exercise is so incongruous. Perhaps Alice of Alice in Wonderland said it best: “*Sometimes I believe in as many as six impossible things before breakfast.*”

Not only was there no single vote from a member of the Majority party to pass health care reform, but they’ve spent four years trying to kill it, repeal it, and derail it, and now are suing the president to implement it faster! It makes no sense.

This lawsuit is clearly being used to appease members of the Republican party who will not rest until President Obama is charged with articles of impeachment; this is a partisan political stunt timed to peak in the House of Representatives in November, right as the midterm elections are happening. The House Majority is suing the President simply for doing his job.

This incredible waste of time will also be a colossal waste of money. The Rules Committee will mark up this resolution. And before we do, we need a full account of the cost of this exercise. I’d like to insert a letter from Congressman Robert Brady, Ranking Member of the House Administration Committee, to House Speaker John Boehner, which addresses the need for transparency.

If outside counsel will be employed, how much will they charge, how long is this process expected to take? Cost is not a hypothetical question. There are real consequences. Remember that the Majority’s legal efforts in support of the discriminatory Defense of Marriage Act cost the American taxpayers \$2.3 million.

What will this lawsuit cost? It’s another example of the House Majority squandering taxpayer funds. To investigate the non-existent Benghazi scandal, there

have been more than 13 hearings, 50 briefings, 25,000 pages of documents produced, and the Majority came up with nothing. And even after they found nothing, they created the Select Committee on Benghazi and gave them a \$3.3 million budget.

And let's not forget that the government shutdown -- foisted upon the country in a Republican attempt to delay the Affordable Care Act -- cost the United States economy \$24 billion dollars. Republicans took the American people and the economy hostage because they did not want to give people healthcare coverage. The House's more than 50 votes to repeal or dismantle the Affordable Care Act has cost us an estimated \$79 million.

All of this to repeal the health care law when polls last week from the Commonwealth Fund found that 77% of people were pleased with their new coverage. Republicans polled had a 74% satisfaction rate with the new plans they've bought. The House Majority is spending billions upon billions of dollars to stymie a law that their own party members support, which is truly a classic case of obstruction. It is further evidence of the foolishness of this whole pursuit.

Furthermore, the Constitution gives to the Congress the power to write the laws. The legal theory put forward by the Republicans to explain why this lawsuit should prevail relies on the notion that somehow President Obama has "nullified" the House's legislative power. This is simply not the case.

Speaker Boehner is not proposing to sue the President because he has not let Congress introduce, hold hearings on, mark up, and pass bills. The Speaker is proposing to sue the President because he hasn't executed the law in precisely a certain way. Remember, the president implemented this massive health care law by phasing it

in, which is not illegal and has been done by numerous presidents in the past.

It bears repeating that the legislative branch consists of two houses, and only those two houses together can pass laws. The president does the executing of those laws. But Republicans have it backwards with this lawsuit. The Republicans want one half of the *legislative branch* to run to the *judicial branch* to tell the *executive branch* how to enforce the law – a responsibility the Constitution clearly commits to the executive!

Congress' legislative power would be nullified if we were somehow prohibited from passing bills that repeal, bills that overturn regulations, bills limiting the use of appropriated funds for certain purposes and for going to war. And the fact that the bills that the House Majority pass do not usually become law is not because their votes have been nullified, it's because they don't have the votes in the Senate!

One of our witnesses, former acting Solicitor General Walter Dellinger, argued the leading case on this issue, *Raines v. Byrd*, in front of the Supreme Court, and I trust him as much as I trust anyone to know what is and what is not vote nullification.

It is also important to note that the House is not the Congress. *Congress* is the branch of government that has the legislative power. The dividing line in this frivolous lawsuit is not the legislative versus the executive. It is Republican versus Democrat, and I hope the courts will see that.

Future historians and legal experts will examine this haphazard congressional action, and I want it to be perfectly apparent, on behalf of the people that sent us here: Democrats deplore what is happening. We are wasting precious time and resources. Republicans are causing us to fritter away billions of dollars that could go to high speed rail, infrastructure, schools, and a thousand other things instead of this ridiculous waste.

The Rules Committee has a duty to reveal this lawsuit for what it is, and I believe we'll do that today with Mr. Dellinger and Mr. Lazarus' help.