**STATEMENT**

**OF**

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**BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES**

**COMMITTEE ON THE JUDICIARY, TASK FORCE ON EXECUTIVE OVERREACH**

***"THE FEDERAL GOVERNMENT ON AUTOPILOT;***
***MANDATORY SPENDING AND THE ENTITLEMENT CRISIS"***

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Thank you Chairman King, Ranking Member Cohen, and Members of the Task Force. I appreciate the opportunity to appear here today to discuss the problems we face with mandatory spending and the need to restore the role of the Congress in federal policy making.

I would first like to congratulate the task force for hosting this discussion. I along with a number of my colleges have worried for more than a decade that the power of the Congress is in decline and that a diminished Congress will inevitably lead to the kind of abuse of executive branch authority that our founding fathers worked very hard to avoid.

Understanding the nature and causes of Congressional decline is important not simply for restoring the first branch of government but for restoring balance and stability to our system of government and protecting the rights and freedoms of our citizenry.

The first point, I would like to make is that what this committee refers to as "executive overreach" is not a new thing. The founding fathers knew that the people who would hold the office of president would be ambitious men. Further, they understood that such men would be mission oriented and they would use the considerable powers at their disposal to accomplish the goals they would set for themselves and for the nation. The current occupant of the White House is certainly no worse than the majority of his predecessors and as someone who served on the staff of the House Appropriations Committee during most of the first term of his immediate predecessor I can assure you his attempts at overreach pale by comparison.

I think history will demonstrate that nearly all presidents have over reached and that is why the founders provided the Congress with the broad powers detailed in Article One.

The failing of the Congress to use those powers is not the fault of the president, that failing rests squarely on the shoulders of the men and women who occupy the House and Senate and their ability to function as an effective legislative body.

If one were to identify a single malady that has led to the current diminished state of the Congress, it is the inability of the institution to perform the task that it was created for—to legislate. As the deliberations at the Constitutional Convention made the founding fathers painfully aware, the essence of legislating is compromise. A legislature that can't compromise can't legislate and today, perhaps more than ever before, we have candidates for Congress being elected on the promise that they will not compromise. Everybody wants it their way and the views of those seeking the serve in the Congress have become significantly more extreme and more removed from a possible middle ground a middle ground that would allow legislation to be enacted.

A significant second problem is the work ethic. I first worked on Capitol Hill 50 years ago during the summer of 1966 when John McCormack was Speaker and Lyndon Johnson was President. I returned to work continuously for the Congress from 1973 to 2004 and I have watched Congress at fairly close range in the 12 years since then. The one thing that experience left me fairly certain of is that you can't legislate if you are not here and you can't oversee the executive branch if a large portion of your time is consumed by making phone calls to your contributors, holding town hall meetings with your constituents or spending quality time with your family.

Simply look at this year's calendar posted by Majority Leader McCarthy. It is remarkable. Of the 251 days in 2016 that are neither weekends nor holidays, the House is in session only 110 and out of session 141. But the story gets worse. There are 28 of those 110 days in which first votes aren't until 6:30 p.m. and another 26 on which the leadership promises that last votes will occur before 3:00 p.m.—so in effect you have 56 full days of session. By contrast you have 84 full days of "district work" and an additional 51 week days that are not scheduled for work in either Washington or the district.

I went through my first full round of budget hearings in the spring of 1974 on what was then called the Labor-HEW subcommittee. Members were expected to be in attendance and the subcommittee met both in the morning and afternoon and often for 4 or 5 days a week. We held a separate hearing for each of agency and often for administrative entities or activities within agencies. For instance, every year we held a separate hearing for each of the separate institutes within the National Institutes of Health. Today, the subcommittee dismisses NIH witnesses after one morning's testimony on the agency's $30 billion budget

When the time came to put that appropriation bill together the markup often lasted several days. Members argued passionately for specific priorities within the jurisdiction of the subcommittee with some items not being resolved before hours of debate had taken place and every member of the subcommittee had weighed in on one side or the other. There were hundreds of separate programs within that bill and nearly all members of the subcommittee had detailed working knowledge of the majority of them.

Perhaps the seminal work on this subject, a book entitled The Power of the Purse by political scientist and congressional expert Richard Fenno, was published in 1966. Fenno conducted more than 90 interviews with Congressional leaders, Appropriation Committee Members, staff and executive branch officials over a period of 6 years. More recently the full text of Fenno's interviews have become available through the National Archives. Here is an excerpt from one interview of a relatively junior member of the Appropriations Committee at the time explaining how his particular subcommittee chairman manages the hearing process. I think that it is quite telling:

> He knows the bill backwards and forwards. He works it hard, awfully hard and the members know it. He's worked with these people for years. And he knows them like a book. He does more work on the bill than all the other members combined…in the hearings he develops his case so completely, has his questions ready and takes maybe two days questioning the witness. When he's through, there isn't much left to ask about. It's all in the record.

I think the members of the Appropriations Committee still work hard but their efforts pale in comparison to this standard. Given the work schedule of the current Congress developing such expertise would be impossible even for the most dedicated member.

There are other impediments as well. The change in the rules of the House Republican Conference imposing term limits on committee and subcommittee chairs is a huge problem. About the time that a member develops the level of expertise necessary to effectively challenge the executive branch on policy matters he is pulled completely out of that jurisdiction and given a different assignment.

In 2002, Ralph Regula of Ohio had more expertise on public land policy which included the operations of such agencies as the National Park Service, the Forestry Service and the Bureau of Land Management and so on than any member of Congress on either side of the Capitol. He had studied those problems and the men and women who managed those agencies for decades. The effect of this rule was to remove Regula from that jurisdiction and move him to assume the chairmanship of the Labor-H subcommittee—a subcommittee that he had never previously served on. It was a red letter day for bureaucrats in the Departments of Interior, Health and Human Services, Labor and Education. It was a very bad day for the Congress.

Term limits for committee chairs has not only weakened the expertise of committees it has weakened the ability of committees to use the limited expertise that they do retain. The fact that nearly every committee chairman is a potential candidate for a different chairmanship once his term has expired has greatly reduced the independence and power of committees relative to their own leadership. This centralization of power in the House has shifted decision making from committee members and staff whose job it is have expertise on programs and policy matters before their committee to members of the leadership and their staff who view the world on a far less substantive basis and often without an even a rudimentary understanding of the policies and programs involved.

Finally, I think it is a serious problem that so many people leave the Hill at such an early point in their careers. Working for a legislature that does not legislate seems to provide minimal gratification. The ability of the Congress to build the kind of expertise necessary to truly track the activities and accomplishments of executive branch agencies is highly dependent on not only attracting capable staff with skills relevant to that task but to retain and train them over an extended period of years. The ability of the Congress to do that is markedly lower today than at any time since I began working up here 50 years ago and during that period the complexity of government and the issues with which it must grapple has grown exponentially.

The specific issue being raised in this hearing is mandatory spending and the extent to which such legislation limits the discretion of the Congress or inversely expands the power and authority of the executive. I hope that you will forgive me, but I find the juxtaposition of these two important questions somewhat odd.

Entitlements do limit the flexibility of government in setting fiscal policy. They in essence guarantee that certain amounts will be available to selected beneficiaries regardless of other fiscal pressures facing policy makers. But this is not a guarantee that advantages the executive branch at the expense of the legislature. Unlike discretionary funds, the bureaucracy has very little choice in how entitlement funds are disbursed. They flow directly from the Treasury to the beneficiary based on formulas contained in law.

Trust funds used for the purpose of administering these programs must be appropriated on an annual basis by the Congress and are therefore discretionary dollars not entitlement spending. Further, as the following analysis demonstrates, entitlement programs are clearly squeezing out discretionary spending which is the life blood of the executive branch. If there is a balance of power issue here it is one that is at the expense of the executive branch.

But let's turn first to the role that mandatory programs play in the growth of overall federal spending. Thirty years ago we spent $416 billion on mandatory programs. Last year we spent $2.3 trillion—a 453 percent increase. Even when we adjust for inflation and population growth, Mandatories have grown by 92 percent.

So what is driving this terrific growth in mandatory spending? There are literally hundreds of Mandatory programs but as far as the growth of federal spending is concerned there are only three programs that really matter—Social Security, Medicare and Medicaid. As a country, we spent a little more than $2600 per person in 2016 dollars on these big three entitlements in 1985. Thirty years later we spent $5900 on those same three programs—a 124 percent increase. After adjusting for inflation we were spending $3300 per person more on those three programs than we had had spent 30 years earlier and during that period, real per capita federal spending on all programs grew by less than $2800. Everything in the budget besides Social Security, Medicare and Medicaid was shrinking.

Why has there been such a huge increase in the cost of these programs? There have been some benefit increases such as the creation of Part D under Medicare and the expansion of Medicaid under the

Affordable Care Act. But even without those benefit expansions, these three programs would have accounted for more than 100 percent of real per capita growth.

There are essentially three big problems. Demographics, longevity and better health care. The Great Depression and World War II were followed by a huge increase in the birth rate in this country that lasted until the early 1960s. Further, people born in 1930 on average did not make it to age 60. People born 20 years later in 1950, (the approximate age group who are becoming eligible for Social Security and Medicare in the current year) could on average expect to reach the age of 68. So far more Baby Boomers are reaching retirement age than was true of the previous generations and they are living much longer in retirement.

Finally, we have seen enormous strides in the quality of medical care and its availability to the population. That is not only increasing longevity but also the cost treatment. Medicare and Medicaid pay the vast majority of those costs for our rapidly growing elderly population.

Medicaid is often viewed as the health care program for nonelderly. Even before the Affordable Care Act, three quarters of the enrollees were non-elderly. But 5 percent of Medicaid enrollees account for more than 50 percent of Medicaid costs and the elderly and disabled account for well over half of all billings.

The big ticket item for this group is long term care which totals about 30 percent of Medicaid costs. Before reaching a skilled nursing facility, many seniors go through prolonged periods of home health care or as residents in assisted living facilities. Thirty-five percent have depleted all of their resources and qualify for Medicaid when they arrive in nursing homes. Seventy percent qualify before they complete their stay. As a result Medicaid is crucial to not only low income seniors but for all but the most well to do, it is the long term care insurance of last resort and it is critical not only to those seniors who eventually need long term care but for their families who would be left with a financial burden far heavier than they could likely shoulder.

Ultimately, there is one set of numbers that you need to remember when thinking about this nation's entitlement problem. As of last month, the average monthly benefit for a retired worker under Social Security was $1,348. A senior attempting to avoid large unexpected out of pocket health care costs would likely pay more than $350 of that amount just for premiums under Medicare Part B, C and Part F MediGap coverage. That still does not include the out of pocket expenses he or she would face for deductibles, co-payments, over the counter medications, hearing or dental care. So we are looking at considerably less than $1000 a month to meet all of other expenses.

Anyone who wants to do something serious about reigning in government spending isn't going to get to first base if they don't go after mandatory spending. Anyone who says they are going significantly alter the growth rate of mandatory spending and claims they are simultaneously going to protect retirement programs is either grossly misinformed or lying. We have 45 million beneficiaries. That is where the money is going and it is going to be a very ugly task to make serious savings. You can protect Social Security and put that on your bumper sticker but ultimately if you make the savings by cutting Medicare and or Medicaid as a number of proposals before the House have done in recent years you are directly cutting the amount that millions of elderly Americans have to live on after meeting their medical bills and that amount is already painfully small.

By way of example I would point to the proposal that Speaker Ryan placed in the FY 2012 Budget Resolution reported by the House Budget Committee when he was chairman. Ryan limited federal payments under Medicare by providing beneficiaries with credits to buy private insurance. When that proposal was reviewed by the Congressional Budget Office, they estimated that out of pocket expenses for a typical beneficiary would increase dramatically. According to CBO the out of pock medical expenses would average $870 a month leaving a typical retiree receiving the current average monthly benefit of $1,348 with only $500 a month to meet all expenses other than health care.

I know that there are lots of people who will say; "oh that is not what I mean by entitlement reform. I only want to cut the undeserving who are of working age but won't do their part. We should attack entitlement programs in general while protecting retirement benefits"

The problem with that is the numbers. We spend painfully little in this country on poor people who are not elderly. Fully 73 percent of mandatory funds go for Social Security, Medicare and Medicaid, Another 8 percent is also retirement money, military and civilian retirement and veteran pensions and so forth. The portion of mandatory spending that goes largely to non-elderly low income individuals, programs like the Children's Health Initiative, Earned Income Tax Credit, Supplemental Nutrition or Food Stamps, Unemployment Compensation, Family Support and Foster Care and Child Nutrition add up to only 10 percent of mandatory spending. What's more, the Congressional Budget Office projects that outlays for that set of programs will shrink substantially in real per capita terms over the coming decade.

I would like to conclude by addressing a comment I heard from a talking head on my T.V. set over the weekend. He said, "There was nothing wrong with country I grew up in" and he strongly implied that there was nothing wrong with going back to that country. I simply offer these statistics in rebuttal.

Over the past fifty years we have brought about a remarkable transformation in the nature of retirement and the quality of life of our senior citizens. In 1959 more than 30 percent of seniors lived in poverty and only 25 percent had health insurance. Now, nearly all have health insurance and less than 9 percent live in poverty, the lowest of any age group.

Unfortunately, many seniors still live close to the edge. The average Social Security monthly check is $1,268 of which about $350 goes to out-of-pocket medical expenses not covered by Medicare. Twenty-five percent of Social Security beneficiaries have no income other than their monthly check. Sixty-six percent depend on Social Security for most of their monthly income. But providing these benefits has required a substantial commitment on the part of the federal government.

We now must decide whether or not it was worth it or whether we want to go back to that well remembered era when entitlement spending was only a fraction of the budget and a small percentage of the overall economy.