

**Rules Committee Hearing on H. Res. \_\_\_, Providing for authority to initiate litigation for actions by the President inconsistent with his duties under the Constitution of the United States**  
**Chairman Sessions Opening Statement**  
**Wednesday, July 16, 2014 at 10:00 EDT**

Good morning. Today the Rules Committee is holding a scheduled hearing to discuss a draft resolution providing for authority to initiate litigation for actions by the President of the United States inconsistent with his duties under the Constitution. The draft resolution in question would be referred to the Rules Committee because it creates an authority within the Rules of the House.

Specifically, we are here to discuss the unwarranted ongoing shift of power in favor of the executive branch. Under President Obama, the executive branch has increasingly gone beyond the constraints of the Constitution. In fact, in a number of instances the President has gone beyond his Article II powers to enforce the law and has infringed upon the Article I powers of Congress to write the law.

Today's hearing is an original jurisdiction hearing, so instead of having Members of Congress before us to testify, we have four expert witnesses – all of whom are constitutional law scholars. Their expert testimony and responses to questions will allow this Committee to better understand the questions at hand as well as our role in rebalancing the separation of powers.

First, we have Jonathan Turley, the J.B. and Maurice C. Shapiro Professor of Public Interest Law at the George Washington University Law School. Thank you for taking time out of your busy schedule to join us today, Professor Turley.

Second is Professor Elizabeth Price Foley from the Florida International University School of Law. Professor Foley, thank you for coming and we look forward to your testimony.

Third, we will hear from Simon Lazarus, Senior Counsel at the Constitutional Accountability Center. Thank you for being here, Mr. Lazarus.

Finally, we have Walter E. Dellinger III, the Douglas B. Maggs Professor Emeritus of Law at Duke University. Professor Dellinger is also a lawyer at O'Melveny & Myers. Thank you for coming, Professor Dellinger.

Today's hearing will be structured as follows. I'll share an opening statement before turning to Ranking Member Slaughter so that she can provide us with her opening statement. I will then ask each of our witnesses to provide us with their testimony that will help our Members better understand their thoughts on the issues at hand.

After we hear each witness' testimony, we'll then open the hearing to questions. I encourage each Member of the Committee to make an opening statement before asking his or her questions. Additionally, Members should feel free to enter any longer statements for inclusion into the record. With all of that out of the way, let's get started.

At the beginning of this Congress, each of us on this dais took an oath of office in which we swore to "support and defend the Constitution of the United States." Similarly, at the beginning of each

presidential term, the President takes an oath to “faithfully execute the Office of President of the United States, and . . . to the best of [his] Ability, preserve, protect and defend the Constitution of the United States.” While these oaths are different on the margins, the crux of each oath is the same – the President and Members of Congress have an obligation to follow and defend the Constitution.

The text of the Constitution that we have sworn to defend provides separate powers for each branch of the federal government. Article I puts the power to legislate – to write the law – in the hands of Congress. Article II, on the other hand, requires that the President “take Care that the Laws be faithfully executed.” This difference is important. The Founders knew that giving one branch the power to both write and execute the law would be a direct threat to the liberties of the American people. They separated these powers between the branches in order to ensure that no one person could trample upon the rights of the people.

My fear is that our nation is currently facing the exact threat that the Constitution is designed to avoid. Branches of government have always attempted to exert their influence on the other branches, but this President has gone too far. Rather than faithfully executing the law as the Constitution requires, the President has instead selectively enforced the law in some instances, ignored the law in other instances, and, in a few cases, changed the law altogether, all without going through the required constitutional law making process.

The law, as written by Congress and signed by the President, must be enforced by the President as written. If the President wishes that the law be changed, Article II of the Constitution provides him with the power to “recommend to [Congress] consideration such measures as he shall judge necessary and expedient.” The Constitution does not, however, give the President the power to rewrite the law himself. If the President wants a change in the law, the federal government must follow the process required by the Constitution.

Any approach in which the President can ignore, selectively enforce, or unilaterally rewrite the law tilts the balance of power away from the legislature and toward the executive. Presidential overreach also undermines the rule of law, which provides the predictability necessary to govern a functioning and fair society.

When the executive branch goes beyond its constitutional powers and begins exercising the role of the legislative branch, it is important that the remaining branch of government – the judiciary - play its role in rebalancing the separation of powers. After all, the constitutional limits on government power are meaningless unless judges enforce those limits. It is vital that the judiciary engage with the Constitution and play its essential role in the system of checks and balances crafted by our Founders.

It is important that we all acknowledge that this is not a political issue. This is not an issue that should pit Republicans against Democrats. The testimony that we will hear today will look deeply into the crux of our constitutional system and the rule of law. Any person interested in our Constitution and our brilliant system of separation of powers should be worried about what is currently happening in our country.

I look forward to the testimony of today’s witnesses as well as questions and thoughts from our Members. At this time, I would like to yield to the Ranking Member for her opening remarks.