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ORGANIZATIONAL MEETING FOR THE 113TH CONGRESS

TUESDAY, JANUARY 22, 2013

House of Representatives,  
Committee on Energy and Commerce,  
Washington, D.C.

The committee met, pursuant to call, at 10:15 a.m., in Room 2123, Rayburn House Office Building, Hon. Fred Upton [chairman of the committee] presiding.

Present: Representatives Upton, Hall, Barton, Whitfield, Shimkus, Pitts, Walden, Terry, Rogers, Murphy, Burgess, Blackburn, Gingrey, Scalise, Latta, harper, Lance, Cassidy, Guthrie, Olson, McKinley, Gardner, Pompeo, Kinzinger, Griffith, Bilirakis, Johnson, Long, Ellmers, Waxman, Dingell, Pallone, Rush, Eshoo, Engel, Green, DeGette, Capps, Schakowsky, Butterfield, Barrow, Matsui, Castor, Sarbanes, McNerney, Braley, Welch, Lujan and Tonko.

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Staff Present: Nick Abraham, Legislative Clerk; Clay Alspach, Counsel, Health; Charlotte Baker, Press Secretary; Ray Baum, Senior Policy Advisor/Director of Coalitions; Mike Bloomquist, General Counsel; Sean Bonyun, Communications Director; Matt Bravo, Professional Staff Member; Allison Busbee, Policy Coordinator, Energy & Power; Jerry Couri, Sr. Environmental Policy Advisor; Patrick Currier, Counsel, Energy & Power; Brenda Destro, Professional Staff Member, Health; Steve Ferrara, Health Fellow; Neil Fried, Chief Counsel, C&T; Julie Goon, Health Policy Advisor; Robert Horne, Professional Staff Member, Health; Kirby Howard, Legislative Clerk; Debbee Keller, Press Secretary; Nick Magallanes, Policy Coordinator, CMT; Gib Mullan, Chief Counsel, CMT; Katie Novaria, Legislative Clerk; John O'Shea, Professional Staff Member, Health; Monica Popp, Professional Staff Member, Health; Andrew Powaleny, Deputy Press Secretary; David Redl, Counsel, Telecom; Tina Richards, Counsel, Environment; Charlotte, Savercool, Executive Assistant; Alan Slobodin, Deputy Chief Counsel, Oversight; Sam Spector, Counsel, Oversight; Heidi Stirrup, Health Policy Coordinator; John Stone, Counsel, Oversight; Lyn Walker, Coordinator, Admin/Human Resources; Jean Woodrow, Director, Information Technology; Michelle Ash, Minority Chief Counsel, Commerce, Manufacturing and Trade; Jeff Baran, Minority Senior Counsel; Phil Barnett, Minority Staff Director; Jen Berenholz, Minority Chief Clerk; Stacia Cardille, Minority Deputy Chief Counsel; Brian Cohen, Minority Staff Director, Oversight & Investigations,

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Senior Policy Advisor; Alli Corr, Minority Policy Analyst; Greg Dotson, Minority Staff Director, Energy and Environment; Caitlin Haberman, Minority Policy Analyst; Ruth Katz, Minority Chief Public Health Counsel; Elizabeth Letter, Minority Assistant Press Secretary; Karen Lightfoot, Minority Communications Director and Senior Policy Advisor; Karen Nelson, Minority Deputy Committee Staff Director for Health; Roger Sherman, Minority Chief Counsel; Kara van Stralen, Minority Special Assistant; and Will Wallace, Minority Policy Analyst.

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The Chairman. The committee will come to order. I want to welcome the members of the committee, staff and guests of the organizational meeting of the House Energy and Commerce Committee for this Congress, the 113th Congress.

The chair will recognize myself for a few opening remarks.

Serving as chair of this great committee is a wonderful privilege and certainly an awesome responsibility. Sitting in this chair, you cannot help but think of the legacy left from the chairman before and the wonderful opportunities that lay ahead. I am proud of the work that we did together over the last 2 years. It is true that we didn't always agree, and this room was home to some very spirited debates, but that is as it should be. There are certainly genuine differences of opinion, and each of us was elected to represent the views of our constituents in States and allow the democratic process to prevail. But I do not believe that we ever allowed our differences to overshadow that which binds us together: Our commitment to doing what is right for the country and our recognition of how this committee can help address many of the most pressing challenges and unlock some of the most exciting opportunities facing our great country.

So the task for this Congress is clear: We will pursue policies designed to get our economy back on track, our fiscal house in order, and our government in line with the needs and wishes of its citizens. And we will pursue policies that allow job creation and economic growth to flourish, and we will continue to take steps to transform Washington

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to develop a smaller, modernized government for the innovation era. And we will work to protect families, communities in the civic initiatives that allow American ingenuity to thrive.

With that, I would be happy to yield to Ranking Member Waxman for any remarks that he might have.

[The prepared statement of The Chairman follows:]

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Mr. Waxman. Thank you very much, Mr. Chairman.

I want to start by thanking you and your staff for the collegiality you have demonstrated at the start of this 113th Congress. You have been fair and considerate in your approach to organizing the committee. This was your approach last year as well.

This committee was often divided on partisan lines, but through it all, you treated the Democratic members fairly, and I thank you for that.

My wish for this Congress is that we will be able to extend the spirit of collegiality that characterized our dealings on procedural matters to substantive ones. One of our major areas of jurisdiction is energy policy, our Nation urgently needs a new energy policy. As Superstorm Sandy demonstrated, we are facing a large and growing threat from climate change. I know this is a difficult issue for your side, but it is one that we cannot ignore. I hope we will be able to have a constructive dialogue this Congress about the preeminent energy challenge of our era.

I hope also we will be able to move beyond the partisanship that dominated so much of our activities on health last Congress. The Supreme Court has upheld the constitutionality of the Affordable Care Act. The voters have spoken and reelected the President. I hope we will all recognize the health reform is the law of the land. It is here to stay and that our challenge now should be how we work with the administration to ensure the implementation is as successful as

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possible for the American People.

Last Congress, we fought a lot about these two issues, energy and health care, but when we put aside our differences and joined forces, we were able to accomplish results. I asked my staff to prepare a memo for you that reviews our legislative record last Congress. And I would like, without objection, to insert that memo into the record.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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Mr. Waxman. What this analysis shows is simple, when we worked together, we were able to enact good laws. But when the committee reported out partisan bills, they became political statements and that they went nowhere in the Senate. Last Congress, there were over 30 bills that the Republicans reported from the committee without the support of the majority of our caucus or brought directly to the floor without Democratic support. Of these, just two became law in some form. That is a batting average of under 100.

Coincidentally, there are also over 30 bills that we negotiated; 18 of these bills became law. That is a batting average of over 500. These included our committee's biggest legislative accomplishments, like the spectrum and public safety bill and the FDA bill.

Mr. Chairman, our committee is most effective when we work together. And as we start in this Congress, I want to you know that our side wants to work with you as we take on the major challenges we will confront. Thank you so much.

[The prepared statement of Mr. Waxman follows:]

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The Chairman. Thank you.

It is now my pleasure to introduce our new Republican members: Congressman Gus Bilirakis, down in the front, will carry on the legacy of his dad. His dad, Mike, served Florida's Ninth Congressional District from 1983 to 2006, and he also sat on this committee. Representing his district in a State as the only Republican member of the committee from Florida now, Gus is also one of the few members who has been granted a waiver to continue his service as vice chair of the Veterans Affairs Committee. These types of linkages are important because we recognize how our work intertwines with that of the other committees, and we appreciate Gus' willingness to take on both roles.

Bill Johnson from Ohio. Bill retired from the U.S. Air Force after a distinguished military career and quickly put his leadership skills and technical expertise to work, creating and building high tech businesses. He came to Congress a little bit more than 2 years ago now, and he has been real champion for the families and businesses of eastern and southeastern Ohio, recognizing the importance of everything from affordable energy to regulatory relief and the drive to spur economic growth.

Billy Long from Missouri. Billy was a very popular local talk show radio host for 6 years and a small businessman during his 30 years as an auctioneer. From the power of modern communications technology to the constraints facing American entrepreneurs, Billy brings unique insights and a commitment to sound policies and a smaller government

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to our committee. He represents Roy Blunt's old district, and he is currently serving his second term in the House. And if things are ever moving a little bit too slowly in this committee, don't be surprised if we ask him to show off those auctioneer skills to pick up the pace, if you can understand that twang.

Renee Ellmers from North Carolina. For more than 21 years before being elected to Congress, she served as a registered nurse. Her medical experience, coupled with her efforts as a small business owner and community leaders, make her certainly well suited to tackle the challenges of health care costs, access and patient empowerment. She is a North Carolina Representative through and through, but I would be remiss if I didn't point out that she was born and raised in the great State of Michigan. She is now serving her second term in the House, and we are pleased to welcome her to the committee.

And finally, the good old Mr. Ralph Hall, who will celebrate his birthday on May 3rd, his 90th birthday later this year. We say welcome back, big time. Ralph took a sabbatical from our committee while he served as chairman of the Science, Space, and Technology Committee, and we are very happy to welcome yet another Texan back to the committee. So don't mess with Michigan and don't mess with Texas, that is for sure.

I would now recognize Mr. Waxman to introduce our new and returning Democratic members.

Mr. Waxman. Thank you, Mr. Chairman.

I want to welcome back all the returning members of the Energy

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and Commerce Committee.

On the Democratic side, we have an exceptionally capable and experienced group of members. I am very proud of them. As I learned last Congress, there is no shortage of talent on either side of the aisle.

The returning Republican members of the committee are good allies when we are together and formidable foes when we are not.

I join Chairman Upton in welcoming the new Republican members of the committee. You are joining a very special committee, one with over 200 years of service to the Nation.

Now it is my great honor to introduce the five new Democratic members on our side of the aisle: Jerry McNerney represents California's Ninth Congressional District, which encompasses the towns and cities of the San Joaquin Valley and along the River Delta. Jerry has a doctorate in math. So he will make sure our numbers add up. He is the only Member of the Congress to spend 20-plus years in the renewable energy field. During the 111th Congress, Jerry served as an able member of this committee, and I am very pleased that he is back with us.

Bruce Braley represents Iowa's First Congressional District, which includes the Cities of Waterloo, Dubuque, Cedar Rapids, as well as the State's northeast farming counties. Bruce is an experienced trial lawyer, who practiced in Waterloo for 23 years before being elected to Congress, and I have seen him use the skills with great affect

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at oversight hearings. He served on this committee in the 111th Congress, and I am pleased to welcome him back to our ranks well.

Peter Welch represents all of Vermont, to that large Congressional district. He has represented it since 2007. He served on this committee as well in the 111th Congress. He is a champion on energy efficiency, health care and consumer protection, so his legislative experience is a great fit for the committee. When he served on our committee, he was the sponsor of the Home Star legislation that passed the House and provided incentives for energy efficiency, improvements in homes, a good idea that I hope we can revisit in this Congress.

Ben Ray Lujan represents New Mexico's Third Congressional District, which includes Santa Fe, the State's capital. Before joining the House of Representatives in 2009, Ben Ray served as chairman of the New Mexico Public Regulation Commission, where he developed an expertise in many of the issues that will be coming before our Energy and Commerce Committee. He has deep roots in New Mexico, in fact his family has lived there since it was a State, and we welcome Ben Ray to the committee and know that he will have much to contribute to our work here.

Paul Tonko represents New York's 20th Congressional District, which includes the Cities of Albany, Schenectady, Troy, Saratoga Springs, Amsterdam, which is his home town. Prior to his election to the House of Representatives, he served as chairman of energy committee

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in the New York State Assembly, so he has great expertise and insights on energy issues to bring to this committee. He was also a leader on mental health issues, and what you may not know is that he has been recognized by his colleagues as the best dancer in the House of Representatives, which puts us at book ends, because I probably, if there is such a recognition, would be the worst dancer.

So, as you can see, we have new members on our side with great experience and diverse talents, and I ask you all to join me in welcoming these new Democratic members to the committee.

The Chairman. Give a hand to all the members of the committee. We welcome you for sure.

We are now going to move to the adoption of the committee's rules for the 113th Congress. The chair has a resolution at the desk and will ask the clerk to report.

The Clerk. A resolution offered by Mr. Upton. Be it resolved by the Committee on Energy and Commerce that the rules for the committee for the 113th Congress shall be --

The Chairman. Without objection, the resolution will be considered as read.

[The information follows:]

\*\*\*\*\* INSERT 1-1 \*\*\*\*\*

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The Chairman. And the chair will recognize himself briefly.

These rules are substantially similar to the rules adopted by the 112th Congress, the changes are minor. They clarify the chairman's ability to close a hearing record and recognize that the Oversight Subcommittee now has a vice chair and make it explicit the committee's previously implicit authority to conduct transcribed interviews in the course of an investigation. Staff also discussed changing the committee rules to grant the chair the unilateral ability to roll votes, but after discussion with the minority on this point, we decided not to make the change.

I feel confident that Mr. Waxman, from his time as chairman, understands and appreciates the need to manage the committee in an efficient and productive manner, and I want to thank him for his understanding and certainly take him at his word that he will give full consideration to any request to roll votes.

I now recognize Mr. Waxman for recognition.

Mr. Waxman. Chairman Upton, I appreciate your willingness to work with us to propose a rules package that we can all support.

To clarify our mutual understands of new additions to the committee rules, I would like to engage in a colloquy so we can confirm we view the rule changes in the same way.

As the chairman notes, the proposed committee rules include an addition to rule 16, which states that the chairman may authorize committee staff to conduct transcribed interviews in the furtherance

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of an investigation. I believe transcribed interviews can be a valuable tool in our investigations. We used them when I was chairman of the committee. My understanding is that this modification to rule 16 is not intended to give the committee new authority; it is to codify in the rules authority the committee already has and has used in the past. Is that correct?

The Chairman. Yes, you are correct. This committee has a long bipartisan history of conducting strong oversight. As you indicated, the ability to take a transcribed interview is an important tool in conducting investigations. The written professionally transcribed record can further the investigation, provide accurate evidence, and protect the witness' rights. And with that tool, the committee can have an undisputed record.

In the last Congress, some witnesses whom the committee had wanted to interview questioned whether the committee had the authority to take a transcribed interview because our rules were silent. We are solving this problem by specifically stating that the committee staff is authorized by our rules to do transcribed interviews. As you indicated, this is not a change to committee's authority, but it is merely a codification of the authority that has always existed.

Mr. Waxman. The committee has subpoena power that we can use to compel testimony at hearings and the production of documents. My understanding is that we cannot compel attendance at an interview transcribed by staff. Participation by a witness in a transcribed

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interview is always voluntary. Is that correct?

The Chairman. Yes, that is correct.

Mr. Waxman. And after we adopt rule 16, as modified, if a witness would prefer to testify in a hearing with members present, rather than in a transcribed interview with staff, the witness can refuse to participate in the transcribed interview. Isn't that correct?

The Chairman. Yes. Witnesses who would prefer to provide transcribed testimony in a hearing rather than a transcribed interview can decline to participate voluntarily in a transcribed interview.

Mr. Waxman. Mr. Chairman, I thank you for that clarification.

We will certainly support the rules package. I appreciate you working with us. And you certainly will have my cooperation in helping the committee move our legislation efficiently. When it is in our interest, and usually and often it is, to roll votes, I will certainly work with you in that regard.

The Chairman. Well, I appreciate that, and I would like to just continue to engage in a colloquy regarding the committee's subpoenas power. As you know, committee rule 16 allows me, after consultation with you, to authorize and issue subpoenas. I consider that power to be a very serious matter, and I am sure -- I know you share that view. We don't take these things lightly. Indeed, the rule that we have adopted today is the same as the one that we operated under in the last Congress. So today I am asking -- I am seeking the gentlemen's assurance that he will work with us expeditiously in making decisions



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on possible subpoenas. At times, matters can rise very suddenly, and I want to be sure that if we need to, that we can work together very quickly to get a subpoena out the door.

Mr. Waxman. If you will yield, you are absolutely correct that the committee subpoena power is a very serious one. You have my assurance that when you contact me about the possibility of authorizing a subpoena, my staff and I will respond as promptly as possible. We want to work with you.

The Chairman. I thank the gentleman for -- yes, recognize the gentlelady, Ms. Eshoo.

Ms. Eshoo. Thank you, Mr. Chairman, and congratulations on your chairmanship.

And welcome to all of the new members of the committee.

I just have a quick question. Do the rules -- and I think it is under rule 3, relative to hearings, does it include the opportunity for members of the full committee who are not members of a subcommittee to still participate in a hearing with all of the -- what is attendant to that, that they be last in terms of asking questions but still have the opportunity to participate in another subcommittee's hearings?

The Chairman. Absolutely. In fact, we call this, and I refer to it later, as the Eshoo protocol.

Ms. Eshoo. Thank you, Mr. Chairman.

The Chairman. For those members that are new to the committee, if you don't serve on a certain subcommittee that you would like to

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participate in, you may ask unanimous consent to participate, and you will go after all of the other members. You are able to question witnesses and participate. Obviously a markup, that doesn't count, but in a hearing, you are able to ask unanimous consent. And there is not a time that that will not be approved by the subcommittee chair to allow to you sit in and participate at the following as a member of this committee.

Is there further discussion of the rules package? Seeing none, the question occurs on the resolution.

All those in favor will say aye.

All those opposed say no.

The ayes have it. The ayes have it, and the resolution is agreed to.

I would now like to announce my selection of the vice chair of the committee, Marsha Blackburn from Tennessee. The vice chair is often considered the chair's right-hand, and that is why she sits next to me. Doing this job means being committed to the success of our committee and helping us to achieve our goals. She has been a tireless advocate for her constituents, a visible spokesperson on the Energy and Commerce's issues, and a very hard worker, who can be found to be engaging witness in public hearing rooms, no matter what the issue is at hand.

I appreciate her willingness to take on this role, which includes not just the responsibility to help manage committee proceedings and

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provide input on our work, but also to serve as the Energy and Commerce Committee's first designee to the House Budget Committee. This is a big role and one that appropriately recognizes how important our committee is in the coming fiscal debates.

I want to thank you, Vice Chair Blackburn.

We will now consider is resolution establishing the jurisdiction of the Energy and Commerce Committee's subcommittees.

The chair has a resolution at the desk and asks the court to report.

The Clerk. A resolution offered by Mr. Upton. Be it resolved by the Committee on Energy and Commerce that the jurisdiction of the standing subcommittee of the committee for the 113th Congress shall be designated as follows --

The Chairman. And without objection the reading of the resolution is dispensed with.

[The information follows:]

\*\*\*\*\* INSERT 1-2 \*\*\*\*\*

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The Chairman. And the chair recognizes himself briefly.

The jurisdiction of the subcommittee set forth in the resolution is, with a few technical changes, identical to what was on the committee Web site at the end of the last Congress.

Is there a discussion on the resolution?

Seeing none, the question occurs on the resolution.

All those in favor will say aye.

All those opposed say no.

The ayes appear to have it. The ayes have it. The resolution is agreed to.

We will now consider a resolution appointing the subcommittee chair, vice chair, and the majority members for each subcommittee.

The chair has resolution at the desk, and I ask the clerk to report.

The Clerk. A resolution offered by Mr. Upton. Be it resolved by the Committee on Energy and Commerce, that the Republican chairmen, vice chairmen and membership of the standing subcommittees of the committee for the 113th Congress shall be designated as follows --

The Chairman. And without objection, the reading of the resolution is dispensed with.

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The Chairman. The chair recognizes himself again briefly. Pursuant to committee rule 4, just adopted, this resolution simply designates the chair, vice chair and Republican members of each subcommittee.

I want to thank my Republican colleagues for agreeing to serve in these positions. A hard of hot work lies ahead.

Is there any discussion on the resolution?

Seeing none, the question occurs on the resolution.

All those in favor will say aye.

All those opposed will say no.

In the opinion of the chair, the ayes have it.

I now yield to Mr. Waxman to offer resolution.

Mr. Waxman. I offer resolution designating the subcommittee ranking members and the Democratic subcommittee membership for the 113th Congress.

I am pleased that our Democratic caucus has selected the following ranking members of the subcommittees: Ms. Eshoo will serve as ranking member of the Subcommittee on Communications and Technology. Ms. Schakowsky will serve as ranking member on the Subcommittee on Commerce, Manufacturing and Trade. Mr. Rush will serve as ranking member of the Subcommittee on Energy and Power. Mr. Tonko will serve as ranking member of the Subcommittee on Environment and the Economy. Mr. Pallone will serve as ranking member on the Subcommittee on Health. And Ms. DeGette will serve as ranking member of the Subcommittee on

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Oversight and Investigations.

These are thoughtful and capable individuals. The Democratic subcommittee members also have a range of experience and expertise that will inform the important work before the subcommittees.

I ask the full committee to support this resolution.

The Chairman. The clerk will report the resolution.

The Clerk. The resolution offered by Mr. Waxman.

The Chairman. And without objection, the reading of the resolution is dispensed with.

[The information follows:]

\*\*\*\*\* INSERT 1-4 \*\*\*\*\*

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The Chairman. And if there is no further discussion on the resolution, the chair will call the question.

Those in favor will say aye.

Those opposed will say no.

In the opinion of the chair, the ayes have it. The ayes have it. The resolution is agreed to.

The chair will now recognize himself to announce a number of policies that we are going to observe in this Congress. As many of you are aware, the committee is transitioning to paperless hearings. The committee used to distribute packets of testimony to members during prehearing staff briefings. For at least the past three Congresses, that paper initiative distribution has been replaced with email distribution -- don't you dare drop your iPad.

The next step in this effort is transition to electronic testimony at all of the committee's hearings. Let me repeat that: The next step in this effort is to transition to electronic testimony at all of the committee hearings. It is my hope that most members have access to a portable device, such as a laptop or a tablet, which connects us to the Internet, using the House provided Wi-Fi. You can even use your Blackberry if you want to scroll that much. However, using that device, members can access witness testimony and additional materials from the committee Web site. Likewise, members of the public and the media can easily access testimony, opening statements and other resources online.



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For members more comfortable with paper copies of testimony or members of the public who require special accommodations, we won't leave you behind. The committee will continue to provide a limited production of hearing information in hard copy upon request. Our priority is to get members of the committee, the public and the press the information that they need, and I am excited about the new initiative that will allow us to do so more efficiently, with less waste and at a much lower cost to the taxpayer.

So that is number one.

Number two, and as I indicated the Eshoo protocol, by all right, all members of the House are entitled to nonparticipatory attendance at a hearing, even if they are not on that particular subcommittee. For members of the Energy and Commerce Committee, you must -- you may ask unanimous consent to question witnesses if you are not on that subcommittee, but again, you are going to go at the end of the queue. I would ask members not to abuse that privilege. We all have busy schedules, et cetera.

The last thing that I want to say, during markups in the last Congress, bipartisan amendments were given priority recognition. That is going to continue. I encourage members on both sides to participate in that. The majority leader followed several protocols in scheduling legislation on the House floor; for example, no commemoratives, and members must be present during consideration of the bill, no such sums authorizations. While those protocols are not

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binding on this committee, I encourage you observe those protocols in drafting legislation. And without objection, the staff is authorized to make technical and conforming changes to the resolutions passed today.

That concludes the organizational business meeting portion of the day.

[Whereupon, at 10:42 a.m., the committee was adjourned.]