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ONE HUNDRED NINTH CONGRESS

# Congress of the United States

## House of Representatives

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### Statement of Rep. Henry A. Waxman H.Res. 752, Legislation to Investigate White House Knowledge of the Constitutional Infirmary of S. 1932, the Deficit Reduction Act of 2005 House Committee on Government Reform May 4, 2006

Mr. Chairman, today we are considering a resolution to investigate the White House's knowledge of the constitutional defects of S. 1932, the Deficit Reduction Act of 2005, at the time the President signed the bill into law.

This resolution concerns a constitutional principle fundamental to our nation's system of checks and balances: a bill does not become law until the President signs a version identical to the version passed by both the House and Senate. This subject should matter to members of Congress across party lines. And it is a subject crying out for congressional oversight.

The resolution concerns the President's role in S. 1932, the Deficit Reduction Act of 2005. Constitutional requirements were not followed when the bill was presented to and signed by the President. The resolution seeks to find out why.

The Deficit Reduction Act was highly controversial legislation. The Senate passed the measure on December 21, 2005, on a 51 to 50 vote, with Vice President Cheney casting the tie-breaking vote. The House passed the measure on February 1, 2006, by an equally narrow vote of 216 to 214.

But the version of the Act congressional leaders presented to the President had not been passed by both the House and Senate.

The House-passed version of the legislation required the Medicare program to lease "durable medical equipment," such as wheelchairs, for seniors and other beneficiaries for 36 months. The Senate-passed version limited the duration of these leases to 13 months. Although this may seem like a small difference, its fiscal implications are exceptionally large. As the Congressional Budget Office reported, the effect of the change was to cut Medicare outlays by \$2 billion over the next five years.

There is mounting evidence that the President was aware of the constitutional flaw in the Deficit Reduction Act before the President he signed the measure. It appears that on the morning

of February 8 — the day the legislation was signed by the President — the White House Office of Management and Budget notified Republican congressional staff that the version of the legislation presented to the President was not the same as the House-passed version. This information was promptly communicated to the office of House Speaker Hastert. The Speaker's chief of staff then called senior staff at the White House to advise the White House of this mistake and to request a delay in signing of the legislation.

The *Wall Street Journal*, in an excellent investigative report, confirmed the key facts. According to the *Journal*, the Speaker's chief of staff, Scott Palmer, conceded that "the Illinois Republican had asked the administration to delay proceedings until the problem could be addressed by the House and Senate." Indeed, the *Wall Street Journal* reported, "When the Speaker and Senate Majority Leader ... went to the White House for the Feb. 8 ceremony, they expected only a 'mock ceremony' — not a real signing of the parchment that had been presented in error."

Despite these communications from the House Speaker, the President signed the bill on February 8.

This action by the President has serious constitutional implications. When the President took the oath of office, he swore to "preserve, protect, and defend the Constitution of the United States." If the President signed S. 1932 knowing its constitutional infirmity, he would in effect be placing himself above the Constitution.

The President's decision to authorize the National Security Agency to conduct warrantless wiretaps despite federal laws forbidding the practice has raised questions in the minds of many Americans about whether President considers himself bound by the laws passed by Congress. The President's assertion that he can ignore the newly enacted law prohibiting torture has raised similar questions.

The evidence that the President signed the Deficit Reduction Act knowing that it differed from legislation passed by the House presents an even more fundamental issue: Does the President consider himself bound by the provisions of our nation's Constitution?

To learn more about this matter, I wrote the President's chief of staff on March 15 seeking information on the President's knowledge of the bill's constitutional infirmity. After the *Wall Street Journal* reported that Speaker Hastert's office had informed the White House of the problems with the legislation, I joined Democratic Leader Nancy Pelosi in a March 22 letter on this issue to the President. But the White House has refused to respond.

Given the constitutional issues at stake, it is imperative that Congress exercise its oversight powers to examine what the President and his staff knew about the defects in S. 1932 and how they considered and acted on any such information.

I urge my colleagues to support the resolution of inquiry. Whether or not we share the party affiliation of the President, we all have an interest in ensuring that no President can ignore

basic constitutional requirements. We — and the American public — deserve a thorough explanation of how the President came to sign the Deficit Reduction Act of 2005.