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Opening Statement of Rep. Henry A. Waxman Chairman, Committee on Energy and Commerce “The NFL StarCaps Case: Are Sports' Anti-Doping Programs at a Legal Crossroads?” Subcommittee on Commerce, Trade, and Consumer Protection November 3, 2009

Chairman Rush, I want to thank you for holding this hearing today.

As a result of congressional hearings, public outrage, and the actions of professional sports leagues and players associations, progress is being made in reducing steroid use by professional athletes.

Unfortunately, recent rulings in the case of *Williams vs. the NFL* — better known as the StarCaps case — threaten to undermine this progress. We are holding this hearing to understand the implications of these rulings and to assess whether congressional intervention is required.

When Mark McGwire, Rafael Palmeiro, and other professional baseball players appeared before the Oversight Committee in 2005, I said we were holding the hearing because there is an absolute correlation between what happens in major league locker rooms and what happens in high school locker rooms. Rampant steroid abuse in the pros sends an unmistakable message to our kids.

Since that hearing and the hearing last year with Roger Clemens, steroid use by high school students has been dropping. The latest survey data shows that steroid use among 8th and 10th graders is at a 20-year low.

In part, this is attributable to examples set by professional sports and their players unions. As the scope of the problem became evident, Major League Baseball, the NFL, and their players unions established tougher testing policies and new codes of conduct regarding drug use. These changes have not completely eliminated steroid use, but they have made it tougher for players to cheat and increased the consequences when they are caught.

The reason we are having this hearing today is that recent court decisions involving the

National Football League's drug testing policy have put this progress at risk.

A federal district court in Minnesota has ruled — and been upheld by the Court of Appeals — that state laws governing workplace drug testing may trump the collectively bargained agreements of the NFL, Major League Baseball, and other sports leagues. This is a serious problem because some state laws undermine the stringent sanctions established by the sports leagues and their players associations.

If these rulings prevail, they could wreak havoc with policies designed to curb performance-enhancing drug use in professional sports. In fact, if the rulings are taken to their logical conclusion, players on one team could be allowed to use drugs that would subject players on another team to suspensions and fines.

The NFL, Major League Baseball, and other leagues could be limited as to how and when it could test players in Minnesota, but not players on the other teams in the league.

Some players could be penalized for performance-enhancing drug use, while others would get away scot-free.

In short, these new legal interpretations could render the NFL and Major League Baseball drug testing programs unenforceable, loophole-ridden, and unacceptably weak and ineffective.

I believe we can — and must — avoid this outcome.

Our panelists today will offer us guidance on how they expect the legal issues to be resolved and how to solve the problems caused by these new legal interpretations.

I am hopeful that the courts will ultimately rule that the strong collectively bargained drug policies can stand against state laws that would weaken them. But if that is not the case, then we need to find out if the collective bargaining process can solve these problems or whether congressional action is needed.

One thing is clear: we should not allow the drug policies that the NFL, Major League Baseball, and other sports leagues have put in place to be rendered null and void. That is an invitation to steroid abuse in professional sports. And it will inevitably lead to more steroid use on high school football fields and baseball diamonds.

I look forward to the testimony today and thank our witnesses for being here.