

**Remarks of Rep. Henry A. Waxman  
Democratic Ranking Member, House Energy & Commerce Committee**

**Consumer Federation of America Consumer Assembly  
March 17, 2011**

**“Consumer Protection: What’s at Stake in the 112<sup>th</sup> Congress?”**

Good morning. Thank you for the opportunity to address the Consumer Federation of America Consumer Assembly.

More importantly, however, thank you for the hard work each of you has put into advancing sensible consumer protections and reforms. Thank you for the fighting spirit you have shown on behalf of America’s consumers.

It’s with your support, because of your activism, because of your willingness to stay in the fight, that we have had many significant victories with respect to protecting the health, safety, and pocket books of American families.

There is no more important time for you to be here.

Values we have championed for decades are under assault.

At stake are the strides made with respect to consumers’ access to affordable, quality healthcare; an environment with air we can breathe and free of harmful pollutants threatening the survival of the planet; food that is safe and nutritious; an internet that open and available on equal footing for all users; toys and other children’s products that are proven safe and free of dangerous substances such as lead.

All of these things are on the line and under attack in the Republican-controlled House of Representatives.

All that stands between the Republican agenda on the Hill and repeal of basic consumer protections is our commitment, our integrity, our determination, and our insistence that we not retreat from the fundamental value that American democracy and American government must always be, first, for the interests of American consumers – for their health, their safety, and their welfare.

As the former chairman, and now ranking member, of the Energy and Commerce Committee, I am witnessing firsthand the Republican assault on what we achieved, together with President Obama, in the 111<sup>th</sup> Congress.

And there are a couple of common denominators to their assault.

First, it is based on science denial. And when one side denies basic scientific facts, that makes it difficult to find common ground.

My friend Jay Inslee, from Washington State, came to a recent hearing armed with a pile of studies backing the science of global warming that was stacked two feet high. But the Republicans decry climate change as a “hoax.” The Republican Party is now the party of science deniers.

Second, there is more partisanship than I have ever experienced.

Energy issues used to be regional, not partisan. But not today. At yesterday’s markup, there was not one Republican on our Committee who was willing to engage positively with us on global warming.

Similarly, technology issues used to be bipartisan, particularly as they embody a sector of innovation and growth that is ever-expanding. High tech issues do not reflect the old zero-sum paradigm – they are win-win from an ever-expanding pie. But the assault on the FCC’s Open Internet rules is highly partisan.

More traditional consumer protection issues are now becoming increasingly partisan battles as well.

Let me discuss with you these issues as I see them -- consumer product safety, privacy, energy and climate, the internet, health care reform, and food safety -- and why they are so important.

### **Consumer Product Safety**

In 2008, we strengthened safeguards against dangerous consumer products through the Consumer Product Safety Improvement Act – CPSIA.

Republicans and industry have now set their sights on a central feature of this law: a publicly available database containing reports of injury from consumer products submitted by the American people.

Republican freshman Mike Pompeo won approval on the House floor for an amendment that prohibits the Consumer Product Safety Commission from spending any money to operate the database.

But to paraphrase CPSC Chairman Inez Tenenbaum, the money's already been spent – it cost all of 3 million dollars to get this up and running. So any notion that cutting the funding to keep it running has anything to do with exercising fiscal discipline is complete nonsense.

More importantly, though, the database launched last Friday. So for now, we can count this database as a major victory for consumers' right to know about the safety of the products they might bring into their homes.

But Republicans and industry continue to make ridiculous claims about this database. They say it represents job killing regulation that sends manufacturing overseas. They claim it will harm the reputations and businesses of innocent manufactures because it will be filled with false and inaccurate information.

These charges are just plain wrong.

The federal government already operates similar publicly available databases at the National Highway Traffic Safety Administration and the Food and Drug Administration. No automaker has gone out of business or shed jobs because of false or inaccurate reports in the NHTSA database. Nor has any drug or medical device maker.

Moreover, the CPSC is giving manufacturers a chance to see everything about them before it's published, and the CPSC is giving them a chance to provide comments for publication with the consumer's complaint and a chance to contest the complaint.

Manufacturers can't do either of those things with the NHTSA or FDA databases.

And the sad truth, the hard truth, is that most consumer products aren't made in America anymore. This is evident in the fact that most product recalls involve foreign-made goods. And the makers of these foreign-manufactured goods will be just as open to the publication of injury complaints as any of the U.S. manufacturers.

The CPSC's persistence in getting this database up and running, and in a form that Congress intended, is to be applauded. Consumers have a right to make a fully informed decision about the products they purchase.

Nonetheless, the CPSC's ability to continue to operate the database

remains in peril. As long as the budget for the current fiscal year remains unsettled, there's a chance we could lose this consumer protection tool.

Moreover, the database isn't the only aspect of the CPSIA that the Republicans have in their sights. In addition to his amendment to strip funding for the database, Mr. Pompeo also drafted amendments to restrict the CPSC's ability to monitor children's products for lead and assure parents that their kids won't be exposed to this toxic substance.

For the last several decades, public health efforts have aimed to get the lead out. We've taken it out of gasoline, we've taken it out of paint, and to the extent we can, we must – as the Centers for Disease Control has recommended – eliminate nonessential uses of lead in consumer products. And that is precisely what the CPSIA does.

Critics argue that this law is too broad and swept in too many products. They say no child is ever going to swallow an ATV. They argue no child is ever going to swallow a bike. They argue that no child has ever suffered from, quote, "lead poisoning" from domestically manufactured toys. By this they generally mean no child has experienced such severe poisoning as to require medical treatment or suffer death.

Well, let's set the record straight.

Lead rubs off of toys and other products handled by children. And the research is clear: Kids put their hands in their mouths. Kids put their things in their mouths – even if they don't swallow them whole. Not only do they do this, they do it a lot. So kids ingest lead by moving it from hand, to mouth, and into the body. And each time this happens, that lead stays in the body and builds up over time in the bones.

This type of exposure to lead generally won't kill a child. But that was never the only problem we were worried about.

There is no known safe level of lead exposure for children. Exposure to lead at even low levels reduces children's intellectual ability. Exposure to lead has lasting effects on behavior, including problems with inattention, reading, and a higher risk of dropping out from high school. Lead has been linked to increased aggression and antisocial and criminal behaviors.

These public health problems come with social costs – increased costs for education, increased cost for the judicial system, and increased costs for law enforcement and detention.

Now I'm not going to stand here and argue that the CPSIA is perfect. That's never been my position.

Last year I worked with industry and consumer and health advocates, including the CFA, to try to tweak the independent testing requirements without uprooting the core elements of this law. I was determined to move forward on a bipartisan basis, but Republicans refused to come along – even though we managed to put together a compromise that was backed by industry.

However, I stand behind the premise that we must get lead out of children's products and that we must have some basis for believing that manufacturers are complying with efforts to reduce lead content levels.

So whether Republicans try to strip funding for the database, whether they try to roll back the lead content requirements in such a way that amounts to testing a product's safety by first exposing our children to it, these are not fights from which we will retreat.

## **Privacy**

For all the partisanship of this Congress to date, privacy is one issue where we can work together across party lines, if there is a willingness to do so.

The reasonable collection, use, and dissemination of information online can bring tremendous benefits to both consumers and businesses, and make the online market a place where consumers more readily find opportunities that interest them and businesses more readily locate potential buyers.

While we do not want to stifle the innovation that drives this process, legitimate concerns exist about whether consumers have adequate control over personal information that is shared.

Most Americans don't want their Internet browsing habits tracked, dissected, and sold to marketers and most Americans also don't know it's already happening.

Moreover, in a world where technology continues to get faster, more powerful, and cheaper, it is now possible to cheaply store enormous volumes of data about each of us in the tiniest of physical spaces.

This has created an opportunity for data collectors to bring together previously hard to get and disconnected bits of information; not just information collected from your online habits, but from offline sources as well.

Each little bit makes clearer the picture of you who you are, not just in name, face, and location, but your habits, your likes and dislikes, your proclivities and your problems.

This issue boils down to consumers right to know – the right to know

that someone has placed a tracking device on your computer, on your personal property, and the right to know clearly and concisely what that tracker intends to do with any information collected about you as a result of your internet use.

While I firmly believe high-tech entrepreneurs should be free to innovate, to build new businesses, every business, no matter the sector, must deal openly and fairly with consumers.

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In the physical world, no person can get in my front door without my permission, whether that person is there to sell me a vacuum, insurance, or Girl Scout cookies.

What gives internet marketers and data collectors the right to come inside my house, via the Internet, to secretly deliver and place code on my computer to figure which of these same things they should try to sell to me?

But the biggest concern isn't that they know that I'm looking for a new vacuum or that I like Samoas and not Thin Mints. It's not that I saw an ad online for those things that my Internet activity suggests I need, want or might be interested in.

The biggest concern is the potential for long-term and voluminous aggregation of everything I have ever done on the Internet. It's the potential to use this information to make decisions about what finance terms to offer me for later purchases, or whether to offer me insurance and at what rate.

Ultimately, there exists the potential for the government to access all this information – which never would have existed had it not been collected and saved.

We have heard that some of my Republican colleagues intend to introduce legislation on this issue soon. Democratic House member

Bobby Rush has reintroduced a bill on this issue that he unveiled last year that was widely praised by industry and privacy advocates. I understand Senator Kerry also is working on legislation that he hopes to introduce soon on that side of the Capitol.

And just yesterday, the White House finally cleared and unambiguously signaled that it wants Congress to take action to protect consumers' privacy.

I hope this is an area where we will be able to work together. But as the saying goes, time will tell.

### Climate Change and Global Warming

A week ago we heard from some of the world's leading climate scientists. They told us that climate change is real ... that it is caused by humans ... and that the impacts could be devastating.

Their scientific conclusions are the same as those reached by the National Academy of Sciences and the premier scientific organizations of all the world's major economies.

Not a single scientist agreed with Senator Inhofe and Republicans on the Committee that climate change is a hoax.

Yet this week, the Committee on Energy and Commerce reported out legislation completely premised on Senator Inhofe's belief.

In an astonishing debate, Republican members simply denied that there is any climate problem, and that there was no scientific basis to deal with global warming. Every Republican member voted against amendments that sought to establish that climate change was occurring ... that it was a result of human activity ... and that climate change affected human health.

All were defeated.

With oil at \$100 per barrel, the Middle East in turmoil, and nuclear reactors in Japan on the verge of meltdowns, how many wake-up calls do we need?

We urgently need a clean energy economy. We need more vehicles that run on electricity, natural gas, and renewable fuels. We need more wind and solar power. And we need more energy efficiency.

But the Republican response is to know nothing, do nothing, and innovate nothing.

What's happening here is very simple, and let's be clear about it:

EPA makes sure we have clean air and clean water by reining in big polluters. The American people want their children protected against asthma, and to know that their water is clean and safe.

People want the experts to make these decisions – not the politicians.

The Republican bill won't stop carbon pollution from building up in the atmosphere. It won't address the public health threat facing American families. It won't stop the droughts and floods that threaten agriculture and displace families from their homes. It won't protect the air quality of our cities when summer temperatures soar to record levels. And it won't stop the strange weather patterns that have afflicted most of the nation.

What it will do, though, is gut the Clean Air Act and prevent EPA from addressing this enormous threat to public health and welfare.

Americans know that their family's health and quality of life depend on a clean environment. They know we need a strong EPA to stop oil

companies and power companies from poisoning our air and water. They know we need a strong EPA to keep toxic chemicals out of our food supply and away from our children.

But instead of giving EPA the resources the agency needs, Republicans are using the budget process to handcuff the agency.

The Republican budget is the most sweeping and reckless assault on health and the environment that we have seen in decades.

This Republican budget slashes EPA's funding by almost one-third, denying the agency the resources it needs to carry out:

- the Clean Air Act
- the Clean Water Act
- the Safe Drinking Water Act
- the Food Quality Protection Act, and
- the Toxic Substances Control Act.

As if that is not enough, riders in H.R. 1 – the continuing resolution for the balance of the fiscal year – block EPA from regulating toxic emissions from cement plants. They defund EPA's efforts to reduce dangerous carbon emissions. And they prevent EPA from protecting water quality in thousands of streams and wetlands, threatening drinking water supplies for millions of Americans.

History will not judge this House of Representatives kindly if we become the last bastion of the polluter and the science-denier.

## The Open Internet

Let me turn now to the Internet.

Last December the FCC took landmark action to preserve the open Internet. These rules are a bill of rights for Internet users. They contain four key provisions that:

- Restore the FCC’s authority to prevent blocking of Internet content, applications, and services, which was struck down by the court in the Comcast decision;
- Prevent phone and cable companies from unreasonably discriminating against any lawful Internet traffic;
- Prohibit wireless broadband providers from blocking websites, as well as applications that compete with voice or video conferencing, while preserving the FCC’s authority to adopt additional safeguards under existing authorities; and
- Direct the FCC to issue transparency regulations so consumers know the price, performance, and network management practices of their broadband providers.

The most vibrant sector of our economy today is our Internet economy. U.S. companies like Google, Facebook, Amazon, and eBay lead the world in innovation. They all urged the FCC to act to protect an open Internet because – and I quote – “common sense baseline rules [are] critical to ensuring that the Internet remains a key engine of economic growth, innovation, and global competitiveness.”

In fact, these high-tech, high-growth companies urged the FCC to do the exact opposite of what my Republican colleagues argue: they wanted even stronger rules than the FCC issued.

Opponents of the open Internet rules have relentlessly criticized Chairman Genachowski for his leadership on this issue. This is most unfortunate and unjustified.

But what is particularly unjustified is the rhetoric that has been directed against these principles

-- that the FCC's actions are illegitimate.

It is long past time that we deconstruct the arguments that are used by opponents of net neutrality, and set the record straight once and for all.

I have likened the open Internet rules to a Bill of Rights for the Internet. Even freedom has rules. Just as America's freedom could not be secured in the 18th century until a Bill of Rights was adopted, so the freedom of the Internet, for all users and for all competitors, cannot be secured until protections are in place to guarantee that the net is open, vibrant, robust and competitive.

Understood in these terms, the Open Internet rules are not a "government takeover of the Internet." The government is not taking over the Internet, but ensuring there is an open Internet for the future. All these rules do is ensure the freest-flowing traffic on the Internet for users, innovators and competitors.

And what are opponents of the open Internet rules really saying? That it is OK for an ISP to block your ability to access a website?

Do opponents of these rules really want what happened in Egypt and Libya and Iran to be possible here in the United States of America?

Are opponents saying it is OK that consumers not have guaranteed

transparency over their Internet access plans? Are they opposed to enforceable rules of the road that let consumers know how much they will pay for how much data?

Are opponents saying that it is OK that some Internet traffic is more equal than others -- that content that competes with content from your Internet provider can be treated differently?

These are indeed the consequences if opponents of these rules have their way.

Contrary to what the Republicans at the FCC's Open Internet policy also means investment and jobs.

Even AT&T and Comcast, which are two of the nation's largest network operators, support the rules. AT&T's CEO stated: "We didn't get everything we wanted. ... I wanted no regulation. But we ended at a place where we have a line of sight and we know we can commit to investments."

Last month we received letters from a broad and diverse coalition of over 130 organizations that oppose efforts to use legislation to block the open internet regulations. Public interest groups and unions, the Leadership Conference on Civil and Human Rights, the United States Conference of Catholic Bishops, and industry associations and small businesses all united to oppose gutting the open Internet rules.

They are exactly right.

And in our fight in the Committee, no voice was more compelling than that of the Consumer Federation of America, which filed, in effect, a Brandeis brief in support of the rules.

In your March 9 letter to us, the CFA said it clearly:

The passage of H. J. Res. 37 would be harmful to consumers and disastrous for the Internet because it would undermine the ability of the FCC to prevent discriminatory, anticompetitive and anti-consumer behavior on the broadband Internet.

We will continue this fight. It is very important, when this legislation comes to the House floor, that we clearly demonstrate a vote margin that will easily sustain a presidential veto. This will send a message of reinforcement to the Senate and of encouragement to the White House.

### The Affordable Care Act and Food Safety Issues

Another battle front for us is health care.

Nothing exemplifies my commitment to meeting long-term challenges more than the new health reform law. I am very proud of what we did to end the abusive practices of health insurers, and to extend coverage to more than 30 million Americans.

Millions of Americans are already benefitting from this legislation: insurers have stopped discriminating against sick children; seniors are saving money on prescription drugs; and small businesses are receiving billions of dollars in tax credits to provide health care coverage.

Repeal will roll back these benefits.

The repeal bill reminds me of the story of Robin Hood -- but in reverse. Repeal will take essential health benefits from millions of struggling American families and give new powers and profits to the insurance companies.

If we repeal health reform, there will be:

- \* No prohibition on discrimination against over 100 million Americans with pre-existing conditions;
- \* No prohibition on insurance companies cancelling your coverage when you get sick;
- \* No prohibition on lifetime caps and annual limits;
- \* No required coverage for young adults on their parents' policies;
- \* No assistance to seniors struggling to afford the cost of drugs in the donut hole;
- \* No free annual check-ups and preventive care in Medicare;
- \* No tax credits for families and small businesses to pay for health insurance.
- \* No establishment of health insurance exchanges, which will help consumers evaluate and purchase policies.

Repeal would be a boon for insurance companies, but an enormous setback for American families. If repealed, the insurance companies can raise their rates, discriminate against millions of Americans with pre-existing conditions, and they can cut off coverage when someone becomes sick.

There are many reasons to oppose repeal. The health reform bill is creating thousands of new jobs. It will cut the deficit by curbing the growth of health care costs, saving taxpayers over a trillion dollars.

But the most important reason to oppose repeal is that repeal of health

reform is repeal of the patients' bill of rights.

Last Congress, we also passed a major consumer protection law: the most significant reform of our food safety laws in 70 years.

It became law in January.

FDA is responsible for safeguarding the majority of our food supply. But the agency has been trying to do this vital job armed with tools we gave them over 70 years ago. The world has changed since then. The U.S. marketplace is an increasingly global one. And the many food-borne disease outbreaks we have seen in recent years were proof that we needed to act.

So it was long overdue that we passed the FDA Food Safety Modernization Act to finally help FDA move into the 21<sup>st</sup> century to protect the safety of our food.

Under the legislation, FDA will have clear authority to issue and require manufacturers to meet strong, enforceable standards to ensure the safety of various types of food. This will allow the agency act to prevent food safety problems before they occur throughout the food supply

FDA will establish a food trace back system, so that public health officials can more rapidly identify the sources of food-borne disease outbreaks.

And FDA will be given new authority to ensure that imported foods are safe.

Most fundamentally, under the bill, FDA will not be the only cop on the beat. One of the critical changes that will occur under this bill is a new focus on prevention, and a shared responsibility between FDA and food manufacturers to keep the food supply safe. The bill will require manufacturers to implement preventive systems to stop outbreaks before

they occur. Additionally, all importers of foreign food will have to demonstrate that the food they seek to bring into this country comes from suppliers meeting FDA requirements.

The challenge now will be ensuring that FDA gets the funds it needs to properly implement this bill. Already, we have heard complaints from some Republicans — particularly by the chief appropriator — that the bill is too expensive and unnecessary. At a hearing last week, Mr. Kingston asserted that our food safety system is “99.9% safe” and that the new law was therefore an “unwarranted expansion.” He apparently derived this number by calculating the numbers of meals eaten each year by our population of 311 million people. Unfortunately, this number wildly distorts the reality of the burden of food safety illness in the U.S. In fact, as Commissioner Hamburg pointed out, one in six people are still made sick by the food they eat—48 million per year. Thousands die each year from the food they eat.

These numbers are unacceptable.

Given the risks to health, it is no exaggeration to say that efforts to defund this legislation are dangerous—and potentially deadly.

We must not allow these efforts to succeed. We all deserve to have every confidence that the meals we eat will not make us sick. The public needs to know that FDA is able to do its job in carrying out the mandates in this legislation.

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We face real threats across a broad swath of important consumer protections. We must preserve, protect, and defend the historic gains we achieved against the efforts to block, defund and repeal.

At stake are the strides made with respect to consumers' access to affordable, quality healthcare; food that is safe; an environment with air we can breathe and free of harmful pollutants threatening the survival of the planet; an internet that open and available on equal footing for all users; toys and other children's products that are proven safe and free of dangerous substances.

From my first days in Congress, I have stood proudly with the Consumer Federation of America and the work you do to ensure that the American people are healthy, safe and protected from big polluters and corporate greed.

Together, we're going to stay in this fight, and we'll stand our ground as long as we have to, proudly and unapologetically defending our accomplishments.

Thank you.