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**TO THE HEALTH SUBCOMMITTEE  
HOUSE COMMITTEE ON ENERGY & COMMERCE**

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Mr. Chairman, Members of the committee, thank you for the opportunity to testify today.

Although I am a Distinguished Fellow at The Heritage Foundation, the views I express in this testimony are my own, and should not be construed as representing any official position of The Heritage Foundation.

My comments regard the creative use—and abuse—of the appropriations process within the health care legislation enacted into law during the last Congress. It is formally known as the Patient Protection and Affordable Care Act (PPACA), but also known to many of us as Obamacare because of President Obama’s crucial role as the driving force.

Because the bill was so unwieldy and complicated, many are only now discovering many of its details and implications. You can hide a lot of needles inside a haystack that contains 2,700 pages.

The massive 2,700-page health care law is deliberately designed to make defunding and dismantlement difficult. Although original estimates reported that it created 159 new government agencies, the Congressional Research Service later concluded that the actual number of new agencies, boards, etc., “is currently unknowable,” because so many of them are empowered to spawn additional entities, just as weeds grow by sending out runners and seeds.

The complexity and confusion extends to the funding process created in that legislation.

The new law attempts to bypass the normal appropriations process, another feature that makes defunding more difficult. By making advance appropriations for tens of billions of dollars up to the year 2019, these provisions of Obamacare seek to remove spending decisions from the reach of the current Congress and from future Congresses and Presidents. Although Obamacare was not pitched to the public as a mandatory spending entitlement, the details of the legislation reveal an intent to block any future Congress from controlling Obamacare’s spending.

One largely unknown fact is that \$6-billion or more was immediately appropriated in the new law and approximately \$105-billion more was appropriated for FY2011 and beyond. That violates the typical Congressional process of appropriations. The normal process typically involves enacting authorization bills that authorize spending, and then follows those with separate legislation that actually appropriates the money. This enables those to be balanced with other spending decisions. The PPACA contained large authorizations for future appropriations as well as containing these actual appropriations. That made it quite different from most bills, even major legislation.

This funding also stayed below the radar screen because it was so often reported—inaccurately—that Congress had not passed any appropriations for the current fiscal year. Obviously, the last Congress chose to fund Obamacare even though they failed to pass any of the regular appropriations bills.

For those who support that new law, this may present no problem. But the process should nevertheless offend their sense of an open, well-publicized and orderly process. The funding of Obamacare is a major concern for those many Americans-- including me--who consider the law unwise, unaffordable, and detrimental to affordable and quality health care.

To de-fund Obamacare, it is insufficient simply to deny future funding. Until the full law can be repealed, at least the existing and advance appropriations need to be rescinded, just as the House last month voted to repeal billions of dollars from previous appropriations to 123 federal programs. An effort to restrict use of the funds appropriated within Obamacare was thwarted because the House did not waive the same point of order (House Rule XXI) as it waived to allow de-funding those 123 other programs. This was most unfortunate.

To any who do not realize that over \$105-billion has already been appropriated to fund Obamacare, I direct your attention to the February 10, 2011, revision of the Congressional Research Service's paper, "Appropriations and Fund Transfers in the Patient Protection and Affordable Care Act (PPACA)," CRS number R41301. It documents the specific provisions that I'm discussing and the magnitude of those advance appropriations.

Speaking as a former Member of Congress who served 14 years on the House Appropriations Committee, and who chaired several of its subcommittees, I am not aware of any abuse of advance appropriations that even approaches the scale found in Obamacare. An *advance appropriation*, as defined and used by the Office of Management and Budget, is an appropriation made to become available one fiscal year or more beyond the fiscal year for which the appropriation act is passed. These are the exception and not the rule in the congressional appropriations process.

I am personally unaware of any occasion in which an advance appropriation has been made for more than one fiscal year in advance. But in Obamacare, passed during FY2010, we find advance appropriations are made for each and every year up to and including 2019. That is ten years of appropriations.

We know that some have suggested a biennial budget process, under which appropriations would be made for two years at a time. But nobody has proposed that any Congress should make spending decisions trying to bind a future Congresses a full decade in advance.

Making many years' worth of advance spending decisions is an attempt to handcuff the current Congress and prevent it from determining current levels of spending. By going far beyond any precedent for making appropriations for future years, Obamacare is an outrageous effort by the former Congress to bind the current and future Congresses. This may not breach the constitutional limits of Congress, but it certainly breaches the sense of propriety. Spending decisions should be made by those who currently hold office, not by those who have resigned or been turned out by the voters.

The common approach that I have seen in your proposed legislation is simple and straightforward. It changes these advance appropriations so they do not occur unless a future Congress and President decide to spend that money. That approval is not automatic. This is a critical change from the default setting of Obamacare, which makes the spending automatic via advance appropriations.

I am glad that the committee is looking legislation to pull back the funds previously appropriated for Obamacare, but I must caution you that timing and leverage are important parts of your effort. If it

takes years to halt the funding stream, then meantime billions of taxpayer dollars will already have flowed out of the Treasury. The underlying law will have sunk its roots deeper into the nation, making it more difficult to uproot. That is why I believe the appropriations process itself must also be used to extinguish these advance appropriations, since it provides proper legislative vehicles that are considered must-pass legislation.

Defunding is a routine policy tool for Congress. So is funding that is well below the amounts authorized.

As noted by the Congressional Research Service (CRS), “Congress is not required to provide funds for every agency or purpose authorized by law.” Defunding is a legitimate use of the power of the purse that the Founding Fathers wisely granted to Congress. As James Madison said, “This power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.”

The White House also routinely proposes zero funding for many federal programs. In his latest budget proposal, President Obama proposes what his budget office describes as 211 program terminations and reductions.

So when a repeal of legislation is blocked, defunding is the obvious and proper next approach. In the case of Obamacare, this is tricky because the law is designed to be difficult to uproot, just like a plant with an elaborate root system. Everyone who has a lawn and has pulled weeds knows this problem firsthand.

But defunding can be done and should be done, and internal Congressional protocols should not be used to block this. Undoing what was done last year is a proper pursuit. Dr. Ed Feulner, president of The Heritage Foundation, often reminds us that in Washington there are no permanent victories and no permanent defeats.

If we intend for a policy to bind future generations, we should follow the super-majority process that would enshrine it in our Constitution. But we should not accept that a simple act of Congress today should be elevated to handcuff a future Congress.

Thank you for the opportunity to testify today, and I look forward to your questions.

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