

Thank you for the honor of appearing before the Tom Lantos Human Rights Commission.

It's been the highlight of my fifteen-year career in Washington to have served on the U.S. Helsinki Commission, a sister human rights commission, and to have worked alongside human rights champions like Senator Ben Cardin, Representative Chris Smith, and Representative Jim McGovern.

I would also note here in the presence of my fellow panelist Daniel Calingaert, that were it not for Freedom House's early and unflagging support, I do not think we would have a Magnitsky Act to expand. Many other human rights organizations ultimately supported the Magnitsky Act, but Freedom House was first and their advocacy was, I believe, decisive.

Let me also clarify at the outset that my remarks here today are based on my work for a former employer and do not represent an official position of the House Committee on Foreign Affairs or its leadership.

You have heard today from two eminently qualified witnesses on the compelling story of Sergei Magnitsky and the broader human rights context. I will try to add a "behind the scenes" view, particularly for the benefit of those congressional staff present, of the legislative history behind the proposal that initially sought to address an individual case and now aims to become a global standard. I will do that by answering a few frequently asked questions and will be happy to address any further questions during our discussion period.

### **What informed the Magnitsky approach?**

- Born in the frustration of sending another press release condemning yet another serious human rights violation or writing a letter asking that some specific case be "raised." The time had come for consequences.
- Knowledge that two successive administrations recognized and were grappling with the same concern, but seemed to need a nudge from Congress to actually implement a solution.
- Precedent for such an approach in Presidential Proclamation 7750, the Immigration and Nationality Act, the Burmese Freedom and Democracy Act, the Belarus Democracy Act, and relevant human rights provisions in Iran sanctions legislation.

### **How it became global?**

- The language and ideas themselves pointed the way to a universal standard as we worked to write the operative legislative text as broadly as possible. References to

geography, citizenship, or ethnicity did not make sense on a moral or substantive basis.

- A note on the use of an agency clause vs. references to family to target corruption.
- Why the first attempt ended up being Russia-specific?

### **What the Magnitsky approach is really about?**

- A commonsense way of protecting our own national security and moral clarity and a cost-effective way of extending solidarity to those who suffer human rights abuses abroad.
- A strike at impunity and a form of lustration.
- A form of dual-track diplomacy.

### **What it's not about?**

- Justice or a judicial sanction.
- A comprehensive policy—does not obviate the need for foreign assistance to civil society, etc.
- Anti-Russia, anti-China, anti-Azerbaijan or anti-any country.

### **Who is it aimed at?**

- Individuals in countries where the rule of law has collapsed and where the elite value access to democratic countries with world-class financial institutions and the rule of law.

### **What can it accomplish?**

Human rights abuses are ugly and shameful things and it is natural to want to avoid such unpleasant realities when conducting sensitive international negotiations. But realities they are, nonetheless, and avoiding them does not make them any less real. Conversely, addressing these realities, even publicly, can never properly be understood to be an irritant to good relations. The true irritant to relations is, of course, the human rights abuse itself, not the person or government calling attention to the abuse.

A Magnitsky approach to human rights policy is a hedge against the easier softer way of avoiding or deferring the human rights conversation to a better time, a time that almost never comes on its own given the relative strength of other interests and the pace of developments in the world.

Such an approach will surely cause some to point the finger at the United States and accuse us of human rights violations. But by levying such an accusation, the premise that human rights ought to be protected is vindicated. And, since this isn't about winning an argument, but improving people's lives, we can confidently deal with any accusations on the merits while ignoring ill will or disingenuousness on the part of the accuser.

The Magnitsky approach, in its essence, is really about applying a greater measure of transparency on a subject we already know a lot about and other countries, presumably, suspect that we are not fooled by empty words on human rights. Private knowledge is one thing, but it is quite another thing to publicly admit to knowing the truth about so many human rights outrages. And since governments tend to agree on the abstract principle that human rights should be upheld, the only way to make real progress is to head straight for that part of the conversation where consensus breaks down—namely, the individual case. And compliance with universal and universally binding human rights norms is gained or lost always in the individual case—never in the abstract principle.

Implemented correctly, a global Magnitsky Act can change the world by revealing things that were once dealt with, if at all, behind closed doors and exposing them to the disinfecting power of the sunlight of public scrutiny and oversight.

Thank you.