

MINORITY VIEWS

First, we wish to express our deeply felt distress about the loss of life which occurred at the Crandall Canyon Mine in August of this year. Those events are currently the subject of investigations by both Federal and State officials, as well as three separate congressional investigations. Congress has a legitimate need to perform oversight in this matter. We are not writing these views to object to the investigation itself.

We are writing these views to express our grave concerns about the new Majority's apparent desire to substitute extraordinary actions for the ordinary course of business. The authority for Members—or even staff—to conduct depositions with the potential for criminal jeopardy for the subjects of those depositions is an immense power which should only be exercised in the rarest of instances. Unfortunately, the current Majority has tossed away its earlier concerns about the judicious use of deposition authority, and instead made it a standard part of its legislative tool kit.

The history of deposition authority was succinctly summarized in the Minority Views to accompany H. Res. 167 in the 105th Congress, which provided deposition authority to the Committee on Government Reform in its investigation of certain campaign fund raising irregularities. In views signed by the current Chair of the Committee on Rules, the then-Minority explained that:

Prior to the 104th Congress, only the Committee on Standards of Official Conduct for ethics matters and the Judiciary Committee for impeachment proceedings were given this special type of subpoena power for deposing of witnesses. No other standing committees were granted this extraordinary power. (H. Rept. 105–139, p. 20.)

Yet, in the 110th Congress, deposition authority appears to be available just for the asking. For instance, in the opening day rules package, the Committee on Oversight and Government Reform was granted carte blanche authority to conduct depositions, without regard to subject matter. (Rule X, cl. 4(c)(3)) This rule was adopted without the benefit of any hearings, and tucked into a wide-ranging rules package so as to stifle any opportunity for meaningful debate or amendment. Further, it was adopted without any sort of assurance as to the committee rule to be adopted by the Committee on Oversight and Government Reform. The House had no assurances that the chairman of that committee would respect the rights of the subjects of those depositions or the Minority.

This is exactly the broad grant of authority which caused the Chairwoman such consternation in the 105th Congress. The rule adopted at the beginning of this Congress is rife with the potential for abuse, and leaves the rights of witnesses and the Minority subject to the whims of a committee chair.

Thankfully, the authority granted by H. Res. 836 to the Committee on Education and Labor is far more circumspect in its scope. The authority will expire at the end of the Congress, effectively limiting it to a year. Further, the authority is limited to that committee's inquiry into the 9 deaths, the events leading up to that disaster, and the relevant agencies' response. Those questions are worthy of congressional examination, and we support that effort.

Further, the committee rule adopted by the Committee on Education and Labor is fair in its treatment of the minority party. It provides for:

- Consultation between the Chair and Ranking Republican Member and provides 3-day notice to all of the Members of the Committee prior to invoking the deposition authority;
- A limitation on the conduct of depositions to Members or Committee counsel;
- Limitations on who may be in attendance at a deposition;
- Equal treatment of the Minority in the conduct of questioning;
- A reasonably fair mechanism for handling objections; and,
- Requirements that the release of deposition transcripts only occur with the concurrence of the Chair and Ranking Republican Member, or by vote of the Committee.

In fact, we believe that this committee rule should immediately be adopted by the Committee on Oversight and Government Reform, and should serve as a model for future implementations of deposition authority.

While we are satisfied with the relatively narrow scope of the authority and its implementation by the Committee, we still have questions as to why the Committee on Education and Labor is seeking this authority now. As the Ranking Republican Member of the Committee on Education and Labor (Mr. McKeon) testified before this committee:

Our role in this collage of investigations is to conduct robust oversight. To that end, the Committee has requested—and the Department of Labor has produced—hundreds of thousands of pages of documents related to this mine and its collapse. And more documents are on the way. We also have significant tools at our disposal, even without this new and extraordinary authority, to hold hearings, interview witnesses and officials, insert findings into the official record, and compel the disclosure of documents. We have not come close to exhausting the resources at our disposal to investigate this incident.

Not only is the deposition authority premature at this juncture, it also appears to be unnecessary. Although the majority staff has refused to discuss who they intend to depose, we have been told that only “four or five” witnesses would need to be subpoenaed. I see no reason why the regular hearing process could not accommodate that small number of witnesses.

We understand that Mr. McKeon has indicated that he would ensure that the Republican Members of the Committee were available to receive testimony from subpoenaed witnesses at hearings and

would otherwise facilitate the Committee's investigation. Given those assurances and the broad authority already available to the Committee on Education and Labor through clause 2 of rule XI and its own committee rules, we are frankly confused as to why this authority is necessary.

We must also express our reservations about the potential to exercise this authority in a way which may interfere with the Department of Labor's own ongoing law enforcement investigation. In September, the Acting Solicitor of the Department of Labor wrote to Chairman Miller expressing his concern that his committee's "parallel investigation * * * may compromise the integrity of MSHA's law enforcement investigation and potentially jeopardize its ability to enforce the law and hold violators accountable." While the Committee on Education and Labor refrained from interfering in that investigation during the month of September, we are concerned that this resolution indicates a desire on the part of the Majority to move forward with their own inquiry, regardless of the potential to disrupt efforts to bring wrong-doers to justice. Congress needs to conduct oversight to ensure that the laws are properly executed, but the Constitution demands that Congress leave the enforcement of those laws to the Executive Branch. We are concerned that this resolution could have the effect of blurring those lines.

However, despite these reservations, we will not oppose the resolution. We continue to believe that the Majority is too quick to resort to tools normally reserved for the impeachment of Presidents and the protection of the Nation's security, but given the narrow scope of the inquiry and the fairness of the committee rule, we will not object to the grant of this authority at this time. However, should the Majority continue on its path of making deposition authority routine, we will not be as accommodating in the future.

DAVID DREIER.
LINCOLN DIAZ-BALART.
DOC HASTINGS.
PETE SESSIONS.