

**Statement of Rep. Howard P. “Buck” McKeon (R-CA)**  
**Rules Committee Consideration of H. Res. 836, Granting the Authority Provided under Clause 4(c)(3) of Rule X of the House of Representatives to the Committee on Education and Labor for Purposes of its Investigation into the Deaths of 9 Individuals that Occurred at the Crandall Canyon Mine near Huntington, Utah**  
**December 5, 2007**

Thank you Madam Chair, Ranking Member Dreier, and members of the Committee. I appreciate the opportunity to testify on the proposal to grant deposition authority to the Committee on Education and Labor in the investigation of the Crandall Canyon mining disaster. I joined my colleagues in that committee just a short time ago to establish rules to govern these depositions. The rule adopted by our committee to direct this process was developed cooperatively to ensure that this authority – regardless of whether it is merited – will be exercised fairly and with the full consultation of the minority. Based on his actions up to this point, I have every confidence that the Chairman will treat us respectfully in this process. While I did not object to the parameters of the deposition authority, I expressed caution then, just as I will do now, that this authority is premature, unnecessary, and has the potential to cause great harm.

The Education and Labor Committee has a history of working carefully and cooperatively to ensure safety in our nation’s mines. Last year, we oversaw development and enactment of the MINER Act, the most sweeping mine safety reforms in a generation. We take seriously our commitment to mine safety, which includes appropriate oversight.

Because of that, I do not believe we should take lightly this proposal to diverge from our accepted oversight capabilities. At a minimum, this proposal is premature. Our committee has already made significant progress in our investigation through existing authority to conduct hearings, demand documents, and interview witnesses and experts. Our colleagues on the other side of the Capitol are engaged in similar exercises.

At the same time, the U.S. Department of Labor and the State of Utah have undertaken a series of investigations into the cause of the mine collapse and the handling of events in its wake. There are inquiries into the cause of the collapse; inquiries into the development and observance of the mine’s

safety plans; and inquiries into the handling of the rescue by both the mine operator and federal regulators. There is no shortage in the number and scope of these inquiries.

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.

Today, however, we are beginning down a path that I believe goes far beyond our charge to conduct oversight. By granting the Education and Labor Committee the authority to depose witnesses, we are venturing into an arena rarely entered by Congress, and then, only under circumstances such as national security, the impeachment of a President, and the alleged defrauding of a national organization by its leadership.

Deposition authority will allow dozens of interviews to be conducted under oath and compelled by subpoena. This could create the possibility of a potential web of conflicts of interest, privilege claims and rulings, requests for immunity, leaks, and contradictory evidence.

Previous congressional probes should serve as a cautionary tale as we head down this path. Tactics used in the congressional investigation of the Iran-Contra affair caused key testimony against Oliver North to be thrown out, and his convictions to be overturned.

In early September, the Acting Solicitor of Labor wrote to Chairman Miller and I, along with the leadership of the House, expressing concerns that the 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." Madam Chair, I would like to include that letter in the record. The danger described in that letter is as real today as it was then.

The majority has thus far heeded our warnings and those of the Department of Labor. Interviews have proceeded cautiously to avoid any inadvertent sabotage of the pending inquiries. Our hearing was structured in such a way as to avoid endangering the investigations. I'm concerned that by granting unfettered deposition authority, the House is backing away from that cautious approach and rekindling the threat that our activities could undermine the aggressive enforcement that MSHA and other investigators have an obligation to pursue.

The deposition authority proposed today is crafted narrowly to cover only the Crandall Canyon mine collapse. I have serious questions about the timing and necessity of this discrete authority. Beyond that, however, I want to make it perfectly clear that the narrow authority being granted in this instance should in no way be viewed as a precedent for future oversight functions of our committee. Our committee rules allow for a range of tools and resources that can be used to conduct rigorous oversight – tools that, I would add, are not fully being utilized in this instance. If there is any effort to begin granting a more wide-ranging deposition authority, I believe the dangers will be multiplied exponentially. As such, my objections will be multiplied as well. With that, I yield back.