

H. RES. 1363, GRANTING THE AUTHORITY PROVIDED UNDER CLAUSE 4(C)(3) OF RULE X OF THE RULES OF THE HOUSE OF REPRESENTATIVES TO THE COMMITTEE ON EDUCATION AND LABOR FOR PURPOSES OF ITS INVESTIGATION INTO UNDERGROUND COAL MINING SAFETY

HEARING
BEFORE THE
COMMITTEE ON RULES
HOUSE OF REPRESENTATIVES
ONE HUNDRED ELEVENTH CONGRESS
SECOND SESSION

WEDNESDAY, MAY 19, 2010



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**ORIGINAL JURISDICTION HEARING AND
MARKUP OF H. RES. 1363, GRANTING THE
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WEDNESDAY, MAY 19, 2010

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RULES,
Washington, DC.

The committee met, pursuant to call, at 2:02 p.m. in Room H-313, The Capitol, Hon. Louise M. Slaughter [chairwoman of the committee] presiding.

Present: Representatives Slaughter, McGovern, Hastings, Matsui, Arcuri, Perlmutter, Polis, Dreier, Diaz-Balart, Sessions and Foxx.

OPENING STATEMENTS

The CHAIRWOMAN. The Rules Committee will please come to order.

We are here today to conduct an original jurisdiction hearing, and our witnesses—I will start with the Honorable George Miller, chair of Ed and Labor; and I believe Mr. Kline is coming; is he not?

Mr. DREIER. I don't think he is going to be here.

The CHAIRWOMAN. He will not be here.

Mr. Miller, we will be happy to hear from you.

**OPENING STATEMENT OF THE HON. LOUISE M. SLAUGHTER, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW
YORK AND CHAIR OF THE COMMITTEE ON RULES**

The CHAIRWOMAN. First, if you will excuse me, Mr. Miller, I want to make a very brief opening statement. I feel very seriously about this issue, having been born in eastern Kentucky.

In April, the whole Nation watched transfixed as an explosion rocked the Upper Big Branch Mine in West Virginia, taking the lives of 29 miners.

This accident, like so many before it, raised troubling questions about how the mine was run and whether precautions could have

been implemented to prevent accidents or, at a minimum, save some of those lives after the accidents occur.

I was born in Harlan County, Kentucky. Some of my earliest memories are of hearing the whistle blow at night over the mine. Even small children, as I was, knew then what that whistle meant. It was big trouble. And I imagine that routine hasn't changed much.

It is no surprise to any of us that mining is a job fraught with dangers, but every miner should trust its government has done its job to regulate the industry and ensure compliance with the basic safety requirements. If decisions are being made within the industry that are causing unsafe conditions at mines, it is our responsibility to find out about it.

As with previous mining accidents, there are now multiple investigations unfolding here and in West Virginia. Although the relevant committees in Congress and executive agencies are doing a lot of work to get to the bottom of this particular incident, the Education and Labor Committee believes that its broader investigation of safety practices in the industry as a whole could be stronger if staff had the ability to take depositions.

As in so many cases, there is finger-pointing, a blame game, and reluctance to talk about the internal workings of an industry and a government regulator that could use a lot of oversight, and this investigation will bring some sunlight into that process.

As I understand it, the resolution will not make any dramatic changes to the way the investigation is unfolding. It does not extend beyond this session of Congress, and all the testimony collected by investigators will be shared with the minority. The resolution that is the subject of today's hearing also contains an important oversight provision that will require the Education and Labor Committee to report on its use of deposition authority.

In a minute we will hear more from the committee. It appears the resolution has been specifically drawn to be narrow in scope and targeted strictly at gaining the facts about mining safety, and I look forward to hearing from our witness.

I yield to Mr. Dreier for an opening statement.

OPENING STATEMENT OF THE HON. DAVID DREIER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA AND RANKING MEMBER OF THE COMMITTEE ON RULES

Mr. DREIER. Thank you very much, Madam Chair. Let me simply associate myself with your remarks. Obviously I don't have the perspective that you do. I wasn't born in Kentucky. But just to listen to your very moving story of listening to that whistle and knowing, obviously, there was trouble ahead is something that does underscore the very important responsibility that we have for our constitutionally mandated directive of oversight of these entities which are charged with ensuring the safety of our fellow Americans who have chosen to work as miners. And as we proceed with this authority, I will simply say that I know that Mr. Miller will work very closely with Mr. Kline, the ranking member of the committee, to ensure that all the rights of the minority are addressed.

It is not at all unprecedented for us to establish this kind of deposition authority, but it is unusual, and there is a lot of work that has been done in the Energy and Commerce Committee and the Financial Services Committee without deposition authority to look at issues like highway transportation safety and regulatory abuse that has taken place in the delivery of financial services. So while in a perfect world it would be nice if you could proceed if there are problems that will only be able to be adequately addressed with this authority, we obviously are supportive of that so that the young Louise Slaughters in Kentucky and other places don't have to listen to that whistle blow, meaning that there is trouble and, unfortunately, a possible tragedy on the horizon.

So thank you very much, Madam Chair.

The CHAIRWOMAN. Thank you, Mr. Dreier.

Any other opening statements? If not, Mr. Miller, we will be happy to hear from you.

WITNESS TESTIMONY

STATEMENT OF THE HON. GEORGE MILLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA AND CHAIRMAN OF THE COMMITTEE ON EDUCATION AND LABOR

Mr. MILLER. Thank you, Madam Chairwoman and Ranking Member Dreier, for holding this hearing.

The resolution before the Rules Committee today reflects the seriousness with which Congress takes the issue of mine safety as outlined by you, Madam Chairwoman. As you have pointed out, last month we watched as these tragic events unfolded at the Upper Big Branch Mine in West Virginia. The memory of those 29 miners who lost their lives in this disaster highlighted the importance of our committee's work and that we have the tools to properly investigate issues related to mine safety.

The resolution before you today will be in furtherance of our committee's broader oversight duties regarding the health and safety of our nation's coal miners. I believe that our committee's oversight responsibilities would benefit from the authority to hold and compel attendance at depositions. A deposition serves as an intermediate step between a full public hearing and an informal staff review. It creates a formal record and allows us to explore issues in a more sustained manner than would be practical at a hearing.

Last Congress, the House granted our committee deposition authority for our investigation of the Crandall Canyon Mine disaster in Utah. This successful investigation led to a criminal referral to the Department of Justice in large part because of the evidence our staff obtained in the depositions. I understand that the Department of Justice continues to investigate our referral. I believe that that deposition authority is equally justified this time around.

In recognition of the usefulness of this investigative tool in the last Congress, the Education and Labor Committee has already adopted rules governing depositions. The committee's deposition procedure is a result of a bipartisan process that began last Congress and reaffirmed with the adoption of our committee rules this Congress. It respects and affirms the rights of those individuals

being deposed, and it respects the rights of the minority on our committee.

The Education and Labor Committee has used the tool sparingly and effectively in the past, and should the House of Representatives again grant the committee deposition authority, I will assure the Rules Committee it will be used sparingly and efficiently and effectively as part of our oversight duties.

I want to thank the Ranking Republican John Kline and his staff, who have worked closely with me and my staff on this matter, and thank both you, Madam Chair, and Ranking Member Dreier for allowing me to present this important resolution. And I would urge the committee to bring this matter to the floor.

The CHAIRWOMAN. Thank you very much, Mr. Miller.

[The prepared statement of Mr. Miller follows:]

PREPARED STATEMENT OF THE HON. GEORGE MILLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA AND CHAIRMAN OF THE COMMITTEE ON EDUCATION AND LABOR

Thank you Chairwoman Slaughter, Ranking Member Dreier, and the members of the committee for holding this hearing.

The resolution before the Rules Committee today reflects the seriousness with which Congress takes the issue of mine safety.

Last month, we watched as the tragic events unfolded at the Upper Big Branch Mine in West Virginia.

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Should the House of Representatives again grant the committee deposition authority, I can assure the Rules Committee that it will be used sparingly and efficiently and effectively as part of our oversight duties.

I thank Ranking Republican Kline and his staff who have worked closely with me and my staff on this matter.

Again, thank you Chairwoman Slaughter and Ranking Member Dreier for allowing me to present this important resolution.

I urge the Rules Committee to advance this resolution to the full House of Representatives.

The CHAIRWOMAN. Mr. Dreier.

Mr. DREIER. Thank you very much, Madam Chair. I would like to first ask unanimous consent that Mr. Kline's statement be included in the record—

The CHAIRWOMAN. Without objection.

Mr. DREIER [continuing]. And to say that we have submitted minority views.

[The prepared statement of Mr. Kline follows:]

PREPARED STATEMENT OF THE HON. JOHN KLINE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA AND RANKING MEMBER OF THE COMMITTEE ON EDUCATION AND LABOR

Thank you Madam Chair, Ranking Member Dreier, and Members of the Committee, for allowing me to submit this statement for the record regarding the Education and Labor Committee's request for limited deposition authority to investigate compliance with the Mine Act. I appreciate the opportunity to share my views on this important matter.

This year has been a tragic one for the mining community, with 35 coal miners losing their lives since the beginning of 2010. The dangers of underground coal mining were brought into sharp focus last month with the devastating loss of 29 miners in an explosion at the Upper Big Branch Mine in West Virginia. It was the worst coal mining disaster in four decades.

We do not yet know the cause of the explosion at the Upper Big Branch Mine. When I met with MSHA Assistant Secretary Joe Main a few weeks ago, he reiterated these investigations can take up to a year. With media accounts detailing a parallel FBI investigation, I believe strongly we need to allow MSHA and other investigators to do their jobs, and I appreciate Chairman Miller's assurances that he does not intend to use this deposition authority to impede any ongoing investigations.

However, I am in agreement with Chairman Miller that Congress has a duty not only to write the laws, but to exercise oversight to determine whether those laws are being obeyed and enforced. As such, I appear before you today in support of this resolution. Having tough mine safety laws on the books is not enough—those laws must be observed.

My staff was consulted by the majority in crafting this resolution as a tool to assist the committee with its investigation into compliance with federal mine safety laws. I have received assurances from Chairman Miller that Republicans will be involved in shaping and conducting the investigation, and both sides will have access to all interviews, documents, and other information and materials resulting from our inquiry. I thank the Chairman for those assurances and look forward to maintaining this spirit of cooperation as this investigation proceeds.

Deposition authority is an extraordinary tool not regularly used by congressional committees other than the Oversight and Government Reform panel, and I would note it is being requested in addition to the numerous other investigatory powers already available to our committee. This request demonstrates our commitment to providing robust oversight in the name of worker protection—it also reinforces the importance of acting prudently with this tool.

Again, I thank you for the opportunity to submit testimony on this resolution. My staff has briefed the Rules Committee staff about our position on the appropriate use of this authority, and I'm confident this committee will proceed wisely.

Mr. DREIER. But one of the things I would like to point out, I have raised the concerns that we have and just a cautionary note, which I have every confidence that you will address. One of the things that we say in our minority views is we are encouraged by the inclusion of section 2 in this resolution. That section requires the chairman of the Committee on Education and Labor to report back to the Committee on Rules on use of the authority granted by the resolution. This provision will enable us to evaluate the use of staff deposition authority in this case and have a benchmark to compare for future requests.

So I do very much appreciate the fact that you will come back to us, because, as I said, in looking at the work of the Energy and Commerce Committee and the Financial Services Committee that have been able to address it without the authority, and as you correctly say in dealing with the Utah case, you know, you have come to us; so I think it is very important for us to look at the authority and make sure that it is implemented as effectively as possible.

Mr. MILLER. Thank you. And our discussions with the Republicans is that for us this is sort of an evolving—

Mr. DREIER. Right.

Mr. MILLER [continuing]. That we sort of do lessons learned from each time we use this and then see what of our committee rules should be changed or if there are concerns by this committee about the House rules with respect to this.

Mr. DREIER. So while you are doing the very big picture thing of looking at the oversight of this tragedy, I guess we will be looking at the oversight of the work that you all are doing from this committee.

Thank you very much, Madam Chair.

The CHAIRWOMAN. Are there any questions of Mr. Miller?

Mr. Arcuri.

Mr. ARCURI. Mr. Chairman, I just have a couple questions now. The Oversight Committee does have subpoena power; is that correct?

Mr. MILLER. Yes.

Mr. ARCURI. Your committee does not have standing subpoena power?

Mr. MILLER. I believe we do for documents, but in terms of—of deposing individuals.

Mr. ARCURI. And do you believe that your committee is in a better position because of the background of your committee and the expertise of your committee to investigate this particular accident?

Mr. MILLER. I think so. I think, again, we went through this for the first time on a bipartisan basis in the unfortunate disaster last year, so I think we do. And our ongoing, all-the-time involvement with the Mine Safety Act, with the Department of Labor and with the industry on how this Act is to evolve, there have been two substantial changes to the Act. Clearly, there have been additional changes as a result of this disaster, but this is probably a more complex case than we have witnessed. The others are—well, this was a very powerful, powerful explosion that took place, but this raises questions about the corporate governance of the safety rules as opposed to just sort of the on-site quick decisions that people make, and that is why the deposition—

Mr. DREIER. Will the gentleman yield on that point?

Mr. ARCURI. Yes.

Mr. DREIER. I thank my friend for yielding. And I was just reminded by our Staff Director Mr. Halpern that your committee does have authority for both documents and witnesses at this point. Apparently this authority is for staff to engage in this.

Mr. MILLER. Yes.

Mr. DREIER. So the authority does exist today for both documents as well as witnesses to come before the committee.

Mr. MILLER. Yes.

Mr. DREIER. I thank you for yielding.

Mr. ARCURI. Reclaiming my time, basically this also enables your staff to be able to conduct depositions, I take it?

Mr. MILLER. Yes. Well, the joint, both the majority and minority.

The CHAIRWOMAN. Majority and minority.

Mr. ARCURI. And the last question is the subpoena power that you are requesting is only specifically for this particular investigation.

Mr. MILLER. The deposition authority is just for this investigation, correct.

Mr. ARCURI. Thank you. I have nothing further. I yield back.

The CHAIRWOMAN. Mr. Sessions.

Mr. SESSIONS. Thank you very much, Madam Chairwoman.

Mr. Chairman, the rig that was out in the gulf had a number of employees that were in danger as a result of the explosion and subsequent spill in the gulf, and there were a number of employees who had to jump off a very high platform into oil, a very, very dangerous circumstance, that deals with, I believe, also perhaps labor, employees of this country. Have you considered doing some sort of investigation into that?

Mr. MILLER. The personal safety that—the safety operations of the rigs are under the Minerals Management Service. There have been a number of articles and comments by people about whether or not that is the best place, or whether they should be combined within the other workplace safety operations of OSHA. I have no ability to pass on that at this time. We haven't yet taken a look at that. The people of jurisdiction haven't yet had a chance to take a look at that.

This was a very, very tragic accident, as you pointed out, where those 11 people, and even the people who escaped, had to do—something that you never want to do is fall off an oil rig. They had to jump off an oil rig. But all the attention has been taken to the oil spill and the cleanup, and at some point we have got to get back to was this a safe or not safe workplace?

The record has been improving on the MMS from what I see, but there also is a series of concerns that have been raised, but we have not talked to the Minerals Management Service about how they do their work. One of the things we have found on the shore side of investigations in terms of refineries and others is that there is a concern that you have that a lot of small, little mistakes, so-called small accidents—this happened to British Petroleum in the Texas City explosion—they add up to a dangerous workplace, and then the next thing that happens is a very serious event that takes place in those workplaces, and they don't think they have those procedures for offshore rigs, as I understand it. But this is all sort of a preliminary impression.

Mr. PERLMUTTER. Would the gentleman yield?

Mr. SESSIONS. I will yield.

Mr. PERLMUTTER. The gentleman's questions brought up some concerns that I have, which is okay—and I am going to support this particular rule and authority. But we have had the cranes that have fallen off the buildings in New York. I mean, how far—how often do you want to do this? Because we do have a committee that

their general thing is to do investigations, do depositions, do the subpoena-like work.

So I appreciate your committee wanting to go forward with this, but I also think from a general principle, how often do we want to do something like this? Because the platform in the gulf, I mean, that is, in my opinion, a bigger disaster—

Mr. MILLER. As I understand it, the Oversight Committee, based upon its subcommittee jurisdiction, which is essentially the U.S. Government when you whack it up, can go anywhere and everywhere they want to go. But this is our oversight responsibility with respect to the law under our jurisdiction, in this case the Mine Safety Act, or it could be the Occupational Safety Act. Whatever those laws are within our jurisdiction, we have an obligation both by the House and by the Constitution to oversee those laws.

We do that on a regular basis. We are engaged in a whole series. We did the crane investigations where you found an immense amount of fraud and criminal behavior taking place in some of those jurisdictions. We have done the dramatic loss of life in the Las Vegas City Center construction project, where you saw really just a shredding of the Nevada safety processes that were there when the State was delegated to run that. I mean, we do this—we did the refineries. We have done the mining accidents. Those are all within our ongoing jurisdiction of oversight, and we have subcommittees that are specifically—

Mr. PERLMUTTER. Do you think—if the gentleman would continue to yield to me.

Mr. SESSIONS. I yield.

Mr. PERLMUTTER. Do you think that we should have a general principle then that would allow your committee to have deposition powers, period, as opposed to case by case, just, you know, get it over with and you guys go do it?

Mr. MILLER. I think that is the determination. I mean, that is why we are sort of going through this process of evolving the rules. When we passed our rules this time for this session of Congress, we looked at what we did last time, and now I think because of that is the comfort we have on both the majority and minority side are coming forward and saying, we would like to have that same authority that we used last time. This was the result. This is how it was handled. And it allows you encouragement in this business—a deposition sometimes allows you to get additional information. If somebody is under subpoena, and then all of a sudden they are standing in front of the hearing table, you just may not get that information.

So these are complex layers of people who have responsibilities, responsibilities that are compromised or intimidated very often in the workplace even amongst, tragically, the government enforcement agencies. So I think we are feeling our way in terms of this particular deposition power. We can always be rather crude and send out a subpoena and, you know, give us all you have got, and turn things upside down, but that sometimes doesn't—it's dramatic, but it may not take you where you want to go.

Mr. PERLMUTTER. Thank you. I yield back.

Mr. SESSIONS. I appreciate the gentleman asking and getting time. Madam Chair, I yield back my time.

The CHAIRWOMAN. Are there any further questions? If not, the chair will be in receipt of a motion.

Mr. MILLER. And you have a statement from the minority, right?

Mr. DREIER. Yes. Thank you.

Mr. MCGOVERN. Madam Chair.

The CHAIRWOMAN. Mr. McGovern.

Mr. MCGOVERN. I move the committee favorably report House Resolution 1363, granting the authority provided under clause 4(c)(3) of rule X of the Rules of the House of Representatives to the Committee on Education and Labor for purposes of its investigation into underground coal mining safety.

The CHAIRWOMAN. Thank you, Mr. McGovern.

You have heard the gentleman's motion. Are there any amendments?

Mr. Dreier.

Mr. DREIER. Thank you very much, Madam Chair. I don't have an amendment to the rule, but I just wanted to say that we are obviously in complete support of this effort. As I said, we have minority views that we have submitted for this.

But we are going to be making an attempt to defeat the previous question on this so that we will be able to make in order an amendment which was addressed in an on-line vote with over a quarter of a million Americans voting in the last week that is a proposed spending cut, and I just wanted members to know that that will be a big part of the debate on this issue when the rule comes forward. And I hope very much the members will join us in establishing this opportunity for a spending cut on a measure that deals with the welfare reform question.

The CHAIRWOMAN. Thank you, Mr. Dreier.

Any other comments? If not, the vote occurs on the motion by Mr. McGovern. All in favor, say aye.

Opposed, no.

In the opinion of the chair, the ayes have it.

I will carry this on the floor for the majority.

Mr. DREIER. And I will be managing for the Republicans.

Let me say apparently I need to formally make a request to you that we would be able to submit our minority views.

The CHAIRWOMAN. Without objection.

Mr. DREIER. Thank you very much, Madam Chair.

The CHAIRWOMAN. The Rules Committee is now adjourned.

[Whereupon, at 2:24 p.m., the committee was adjourned.]