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110TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPORT 110–473

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 THE DEATHS OF 9 INDIVIDUALS THAT OCCURRED AT THE CRANDALL CANYON MINE NEAR HUNTINGTON, UTAH

DECEMBER 5, 2007.—Referred to the House Calendar and ordered to be printed

Ms. SLAUGHTER, from the Committee on Rules, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H. Res. 836]

The Committee on Rules, to whom was referred the resolution (H. Res. 836) 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 the deaths of nine individuals that occurred at the Crandall Canyon Mine near Huntington, Utah, having considered the same, report favorably thereon without amendment and recommend that the resolution be agreed to.

PURPOSE OF THE RESOLUTION

The purpose of H. Res. 836 is to grant 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 the deaths of nine individuals that occurred at the Crandall Canyon Mine near Huntington, Utah.

SUMMARY OF THE RESOLUTION

H. Res. 836 applies to the investigation by the Committee on Education and Labor into the deaths of nine individuals that occurred at the Crandall Canyon Mine near Huntington, Utah, including the events that may have led to those deaths and into the administration of relevant laws by government agencies, including the Department of Labor and the Mine Safety and Health Administration, and into other related matters.

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Clause 4(c)(3) of rule X of the Rules of the House of Representatives, as applied to the Education and Labor Committee by H. Res. 836, would allow the Education and Labor Committee to adopt a rule authorizing and regulating the taking of depositions by a member of or counsel to the committee, including by issuing a subpoena. Clause 4(c)(3) further states that a committee rule may provide that a deponent be directed to subscribe to an oath or affirmation before a person authorized by law to administer oaths and affirmations. A committee rule shall ensure that the members and staff of the committee are accorded equitable treatment with respect to notice of and a reasonable opportunity to participate in any proceedings thereunder. Finally, clause 4(c)(3) provides that deposition testimony retain the character of discovery until offered for admission into evidence before the committee, at which time any proper objection will be timely.

BACKGROUND AND SUMMARY OF THE INVESTIGATION

The Committee on Education and Labor has been investigating the events leading up to the deaths of six miners at the Crandall Canyon Mine in Utah and the deaths of three more individuals who were part of the effort to rescue the first six miners.

Crandall Canyon Mine accident

Crandall Canyon Mine, also known as the Genwal Mine, is a bituminous coal mine. A subsidiary of UtahAmerican Energy, headquartered in Utah and itself a subsidiary of Cleveland's Murray Energy Corporation, operates Crandall Canyon Mine and holds a one-half ownership interest in the mine. The owner of Murray Energy Corp. is Robert Murray. On the morning of Monday, August 6, 2007, coal pillars (essentially the walls) in the mine exploded, trapping six miners inside: Kerry Allred, Luis Hernandez, Brandon Phillips, Carlos Payan, Manuel Sanchez, and Don Erickson.[1] The miners were trapped at a depth of approximately 1500 feet below the surface.[2] The same day, the U.S. Department of Labor's Mine Safety and Health Administration ("MSHA") was notified of the incident.[3]

Three days later, in the evening of Thursday, August 9, rescuers drilled a hole into the suspected location of the trapped miners.[4] The hole was drilled to allow not only for air samples to be taken but also for the lowering of a microphone to listen for sounds of life. The microphone was lowered the morning of August 10 but picked up no sounds of human activity. In addition, while the air sample initially taken concluded the atmosphere was hospitable, these samples turned out to be from the bore hole itself, not the mine cavity. Simultaneously, another hole was drilled for insertion of a

[1] Ben Winslow & Jared Page, Drill May Have Missed Trapped Utah Miners, Deseret Morn. News, Aug. 10, 2007. While it initially was believed that an earthquake caused the mine to collapse as seismic waves were recorded at a magnitude of approximately 3.9 on the Richter scale, seismologists later confirmed that the collapse itself was the seismic activity. Stephen Speckman & Ben Winslow, Search is Over, Deseret Morn. News, Sept. 1, 2007.

[2] William Branigin, Rescue of Trapped Miners Lags, Wash. Post, Aug. 8, 2007, at A4; Sara Israelsen, Ben Winslow & Joe Bauman, Miners Trapped, Crews Working Around the Clock to Reach 6, Deseret Morn. News, Aug. 7, 2007.

[3] Mine Safety and Health Administration, U.S. Dep't of Labor, Genwal Resources: Chronology of Updates (2007), http://www.msha.gov/genwal/CrandallCanyonupdates.asp.

[4] Ben Winslow & Jared Page, Drill May Have Missed Trapped Utah Miners, Deseret Morn. News, Aug. 10, 2007.

camera to obtain pictures of the miners.[5] The camera, however, became too dirty and thus was unable to provide any images.[6]

The next day, a third bore hole was started near the back of the mine, where there was a ventilation area; this is because miners are trained to go to these areas in the event that other escape routes are inaccessible. The bore hole was completed the following Wednesday, August 15, but equipment was unable to fit through a bend in the bore hole.

On Thursday, August 16, 2007, ten days after the collapse, underground rescue teams were less than halfway through the rubble to the suspected location of the miners.[7] Murray Energy CEO Bob Murray indicated that the rescue effort was progressing slowly because of the rescuers' need to shore up the mine walls with water jacks as they proceeded into the mine.[8]

The rescue effort suffered a tragedy that same evening, when the mine burst as the result of one of the tunnel walls exploding.[9] Although all rescue workers were pulled immediately from the mine, the blast had killed three of the rescuers and injured nine.[10] The three deceased rescuers were Brandon Kimber, Dale Black, and Gary L. Jensen.[11] As a result of these deaths and injuries to the rescue workers, MSHA suspended its underground rescue efforts.[12]

Later attempts to bore holes in the mine to detect signs of life were unsuccessful. A fourth bore hole was completed on Saturday, August 18.[13] Rescuers were unable to detect any signs of life from the trapped miners, such as tapping or other banging.[14] Fifth and sixth holes also failed to yield any results. The seventh bore hole was completed four days later on Thursday, August 30, showing the entire mine cavity filled with debris and mud.[15] This finding effectively ended the search for the six miners.

On Saturday, September 1, four weeks after the initial mine collapse, the Mine Safety and Health Administration officially ended the search for the miners.[16] In early October, Murray Energy reportedly closed-off the mine entrances with concrete blocks, entombing the miners.[17]

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[5] Sonya Geis, Camera Yields no Images of Utah Miners, Wash. Post, Aug. 12, 2007, at A7.

[6] *Id.*

[7] Dennis Romboy & Pat Reavy, 3rd Bore Hole Being Drilled, Deseret Morn. News, Aug. 15, 2007.

[8] *Id.*

[9] Ben Winslow & Pat Reavy, 3 Rescuers Killed, 6 Hurt, Deseret Morn. News, Aug. 17, 2007.

[10] *Id.*

[11] *Id.*

[12] Mine Safety and Health Administration, U.S. Dep't of Labor, Genwal Resources: Chronology of Updates (2007), http://www.msha.gov/genwal/CrandallCanyonupdates.asp.

[13] Angie Welling, 4th Hole Yields No Clues about 6 Miners, Deseret Morn. News, Aug. 19, 2007; Karl Vick, Mine's 4th Hole Reveals No Signs of Life, Wash. Post, Aug. 19, 2007, at A10.

[14] Angie Welling, 4th Hole Yields No Clues about 6 Miners, Deseret Morn. News, Aug. 19, 2007.

[15] Stephen Speckman & Ben Winslow, 7th Borehole Leads to Rubble, Deseret Morn. News, Aug. 31, 2007.

[16] Hearing on Current Mine Safety Disasters: Issues and Challenges Before the U.S. Senate Comm. on Health, Educ., Labor & Pensions, 110th Cong., 1st Sess. (Oct. 2, 2007) (statement of Kevin G. Stricklin, Administrator for Coal Mine Safety and Health, Mine Safety and Health Administration, U.S. Dep't of Labor). See also Stephen Speckman & Ben Winslow, Search is Over, Deseret Morn. News, Sept. 1, 2007.

[17] Assoc. Press, Utah: Mine Where Men Were Trapped Is Sealed, N.Y. Times., Nov. 22, 2007 (citing Kevin Stricklin, Administrator for Coal Mine Safety and Health, Mine Safety and Health Administration).

Summary of congressional investigation

The Education and Labor Committee's investigation of the Crandall Canyon Mine collapse to date has taken place in the form of requests for documents from the mine owners and government agencies, a subpoena for documents from the Department of Labor, staff presence in Utah during the rescue phase, subsequent staff interviews conducted in person and by phone with individuals near the mine in Utah, interviews conducted in Salt Lake City, and interviews conducted at MSHA District 9 headquarters in Denver, CO.

On August 23, 2007, Education and Labor Committee Chairman George Miller wrote to U.S. Department of Labor Secretary Elaine L. Chao.[18] In the letter, Chairman Miller asked that the Department direct MSHA to ensure all mines have adequate, approved Emergency Response Plans that are fully compliant with the law and that are implemented by the mine operators.[19] The Committee further asked that the Department provide the Committee with copies of each approved plan on file with MSHA, an accounting of whether each mine has an approved plan, and an accounting of whether each mine has implemented its plan.[20] The Labor Department replied to this request in writing on October 12.[21]

On August 27, 2007, Chairman Miller wrote to Michael McKown, General Counsel of Murray Energy Corporation.[22] The purpose of the letter was to obtain documents related to the mine, the mine's lease, any communications between Murray Energy or its employees and the Department of Labor or its subsidiaries, and information related to the rescue efforts.[23] Murray Energy began producing documents to the Committee on September 26 but has yet to complete its production.

Also on August 27, Chairman Miller wrote to Secretary Chao seeking information about mining operations at the Crandall Canyon Mine.[24] One week later, after MSHA officially ended its search for the lost miners, Chairman Miller again wrote to Secretary Chao, appending the August request with a request for documents and other information about the Labor Department's role in the mine rescue effort.[25] While the Department provided the Committee with documents in response to these requests, the Committee did not believe the submissions were fully responsive.

On September 11, 2007, the Labor Department expressed its concern that the Education and Labor Committee was conducting its own, parallel investigation of Crandall Canyon Mine.[26] The Depart-

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[18] Letter from the Hon. George Miller, Chair, U.S. House Comm. on Educ. & Labor, to the Hon. Elaine L. Chao, Secretary, U.S. Dep't of Labor (Aug. 23, 2007).

[19] *Id.*

[20] *Id.*

[21] Letter from the Hon. Richard E. Stickler, Asst. Sec'y for Mine Safety & Health, U.S. Dep't of Labor, to the Hon. George Miller, Chair, U.S. House Comm. on Educ. & Labor (Oct. 12, 2007).

[22] Letter from the Hon. George Miller, Chair, U.S. House Comm. on Educ. & Labor, to Michael McKown, General Counsel, Murray Energy Corp. (Aug. 27, 2007).

[23] *Id.*

[24] Letter from the Hon. George Miller, Chair, U.S. House Comm. on Educ. & Labor, to the Hon. Elaine L. Chao, Secretary, U.S. Dep't of Labor (Aug. 27, 2007).

[25] Letter from the Hon. George Miller, Chair, U.S. House Comm. on Educ. & Labor, to the Hon. Elaine L. Chao, Secretary, U.S. Dep't of Labor (Sept. 4, 2007).

[26] Letter from the Hon. Jonathan L. Snare, Acting Solicitor, U.S. Dep't of Labor, to the Hon. George Miller, Chair, U.S. House Comm. on Educ. & Labor (Sept. 11, 2007).

ment stated that the congressional investigation would interfere with MSHA's own investigation of the accident.[27]

Seeking more documents than provided regarding the Department's communications related to the mine collapse, the Education and Labor Committee issued a September 24, 2007 subpoena to Secretary Chao for Department communications related to the August 6 disaster. In several respects, the subpoena narrowed the documents requested of the Department. Approximately two weeks later, Acting Solicitor for Labor Jonathan L. Snare expressed the Department's concern and surprise with the subpoena, stating that the Department either had responded to or was in the process of responding to the Committee's requests for documents.[28]

On October 9, the Labor Department transmitted to the Committee a DVD–ROM with electronic documents (largely comprised of internal MSHA e-mails) and a collection of documents that were from, to, or referenced Robert Murray, the CEO of Murray Energy, on or after January 29, 2001.[29] More recently, on November 30, the Department provided the Committee with a disk containing MSHA logbook information on the mine accident; the information originally was requested by the Labor Department's Office of the Inspector General.[30]

As noted above, the Committee also has undertaken efforts to interview several individuals with knowledge of the mine and the rescue efforts. Staff have spoken with family members of the miners and their counsel, officials at MSHA, seismologists at the University of Utah, as well as with the leader of the first off-site mine rescue team on the scene. The staff has received briefings from Richard Stickler, the Assistant Secretary of Labor for Mine Safety and Health, and Kevin G. Stricklin, the Administrator for Coal Mine Safety & Health at MSHA. The Committee continues ongoing discussions with Labor Department and MSHA officials regarding the mine and the accident.

Finally, on October 3, the Education and Labor Committee held a hearing entitled, "The Perspective of the Families at Crandall Canyon."[31] Though this was not an investigative hearing, witnesses included relatives of the original miners and the rescue workers: (1) Steve Allred, brother of miner Kerry Allred; (2) Wendy Black, wife of miner Dale Black; (3) Michael Marasco, son-in-law of miner Kerry Allred; (4) Sheila Phillips, mother of miner Brandon Phillips; and (5) Cesar Sanchez, brother of miner Manuel Sanchez. Other witnesses included government officials and mining experts: (1) the Honorable Jon Huntsman, Jr., Governor of the State of Utah; (2) Wayne Holland, International Staff Representative for United Steelworkers; (3) Cecil Roberts, President of the United Mine Workers of America; and (4) Bruce Watzman, Vice President

[27] *Id.*

[28] Letter from the Hon. Jonathan L. Snare, Acting Solicitor, U.S. Dep't of Labor, to the Hon. George Miller, Chair, U.S. House Comm. on Educ. & Labor (Oct. 5, 2007).

[29] Letter from the Hon. Jonathan L. Snare, Acting Solicitor, U.S. Dep't of Labor, to the Hon. George Miller, Chair, U.S. House Comm. on Educ. & Labor (Oct. 9, 2007).

[30] Letter from the Hon. Kristine A. Iverson, Asst. Sec'y for Congressional and Intergovernmental Affairs, U.S. Dep't of Labor, to the Hon. George Miller, Chair, U.S. House Comm. on Educ. & Labor (Nov. 30, 2007).

[31] Hearing on the Perspective of the Families at Crandall Canyon Before the U.S. House Comm. on Educ. & Labor, 110th Cong., 1st Sess. (Oct. 3, 2007).

for Safety, Health, and Human Services for the National Mining Association.

The Committee continues to review documents and testimony it has received during its investigation of the Crandall Canyon Mine accident.

BACKGROUND AND NEED FOR THE RESOLUTION

The Supreme Court and congressional scholars have recognized that, despite silence on the issue in the Constitution, Congress does have the authority to conduct investigations.[32] As the Court explained:

> A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change * * *. Experience has taught that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed.[33]

In furtherance of this, the Rules of the House of Representatives, which establish and convey authority to the congressional committees, provide such committees with the general tools needed to exercise investigative power.[34] More specifically, rule XI of the Rules of the House of Representatives provides that:

- committees may set a quorum of no less than two members for taking testimony and receiving evidence;[35]
- witnesses at committee hearings are afforded certain rights that balance the interests of committees in conducting oversight, including the right to counsel, the right to a copy of the committee and House rules, the right to petition to testify in executive session, the right to submit statements for the record, and the right to obtain a copy of their testimony;[36]
- committees are authorized to sit and act and hold hearings within the United States regardless of whether the House is in session, has recessed, or has adjourned;[37]
- committees may require, by subpoena or otherwise, the attendance and testimony of witnesses and the production of books, records, correspondence, memoranda, papers, and documents it deems necessary.[38]

Such tools, however, are not sufficient in all cases. In some investigations, such as that regarding the Crandall Canyon Mine, not all subjects or people with information related to the investigation will agree to voluntary interviews; such individuals often need to be compelled to cooperate. It should be noted that some witnesses may refuse to cooperate with voluntary interviews merely to hide information, while others fear retribution from employers if they do cooperate.

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[32] *McGrain* v. *Daugherty*, 273 U.S. 135 (1927); Morton Rosenberg, Congressional Research Serv., Investigative Oversight: An Introduction to the Law, Practice and Procedure of Congressional Inquiry (1995).

[33] *McGrain*, 273 U.S. at 175.

[34] Rules of the House of Representatives, Rule XI, 110th Cong. (2007).

[35] House Rule XI cl. 2(h)(2).

[36] *Id*. cl. 2(k).

[37] *Id*. cl. 2(m)(1)(A).

[38] *Id*. cl. 2(m)(1)(B).

In these circumstances, the power to compel witnesses to testify can be an invaluable investigative tool. The primary method of compulsion contemplated by the Rules of the House is a subpoena for a hearing. In the course of some investigations, however, the nature of witness testimony, while significant, might not justify the cost and effort of calling the witness to appear at a committee hearing. For this reason, the House has, on occasion, granted special powers to standing committees and special committees so that they may conduct Member and staff depositions of witnesses.

With respect to standing committees, in the 104th Congress, the Committee on Rules reported and the House adopted a resolution providing special authorities to the Committee on Government Reform and Oversight to obtain testimony on the White House Travel Office matter.[39] The special authorities included permitting the staff of the Government Reform Committee to take depositions.

In the 105th Congress, the Committee on Rules and the House adopted two resolutions that authorized committee staffs to take depositions. First, House Resolution 167 provided special investigative authorities to the Committee on Government Reform and Oversight regarding political fundraising improprieties.[40] Second, House Resolution 507 authorized the Committee on Education and Workforce to take staff depositions in its investigation of the administration of labor laws and the International Brotherhood of Teamsters.[41]

Most recently, the standing rules of the House for the 110th Congress authorize the Committee on Oversight and Government Reform (formerly known as the Committee on Government Reform and the Committee on Government Reform and Oversight) to take staff depositions for any investigation.[42] The authority is not limited to specific investigations but instead is part of that committee's broad mandate to oversee and investigate the operation of the Federal government. These are just the four most recent examples in which the House has permitted the staffs of standing committees to take depositions.[43]

It is this type of deposition authority that is proposed in H. Res. 836 to be granted to the Education and Labor Committee. At the outset, it should be noted that the authority suggested in H. Res. 836 is limited to the events surrounding the deaths of the six miners and three rescuers at the Crandall Canyon Mine. It does not extend to accidents at any other mine. The Committee on Rules believes that vigorous oversight is necessary to learn the causes of this most recent tragedy so that solutions may be found to prevent future death and disability across the mining industry.[44]

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[39] H. Res. 369, 104th Cong. (1996).

[40] H. Res. 167, 105th Cong. (1997).

[41] H. Res. 507, 105th Cong. (1998).

[42] House Rule X cl. 4(c)(3).

[43] As noted, the House also has passed resolutions that created special or select committees with staff deposition authority. For instance, in the 105th Congress, House Resolution 463 established a Select Committee on U.S. National Security and Military/Commercial Concerns with the People's Republic of China. H. Res. 463, 105th Cong. (1998).

[44] In 2006, there were three serious mine accidents that killed 18 miners. H.R. Rep. No. 110–457, 110th Cong., 1st Sess. 20 (2007). Those disasters led to the passage of the MINER Act. *Id*. Nevertheless, just a little over one year after enactment of the MINER Act, the country witnessed another mine disaster. In fact, mining fatalities continue to occur at a rate more than seven times the average for all private industries, exceeding other dangerous occupations such as construction and trucking. *Id*. at 31. According to the latest information provided by MSHA, 56 miners have died from January 1, 2007, through the end of October 2007. *Id*. While news

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Deposition authority would be useful to the Education and Labor Committee in two ways. As indicated previously, it would serve as a means of compelling the assistance of recalcitrant witnesses whose testimony might not rise to the level of committee hearing subjects. In other cases, the deposition authority will allow for subsequent questioning of deposed witnesses at a committee hearing to be more focused and illuminating. This is particularly important in the instant investigation, as the subject matter involves highly-technical scientific and engineering issues.

The vehicle of a deposition also will allow Education and Labor Committee members and counsel to probe efficiently the scope and basis for any deponent's refusal to answer specific questions by the invocation of his or her Fifth Amendment right against self-incrimination. This example is not created out of whole cloth; at least one important witness has indicated that he would plead his Fifth Amendment right against self-incrimination if called to a public hearing. Similarly, any other claims of privilege can be more fully and efficiently addressed in a deposition rather than at a public hearing.

Finally, the deposition authority reflected in H. Res. 836 contains significant protections for both members of the Education and Labor Committee and potential deposition witnesses. For example, any Education and Labor Committee rule promulgating the authority must ensure that the minority Members and staff of the committee are accorded equitable treatment with respect to notice of and a reasonable opportunity to participate in any proceedings thereunder. Further, deposition testimony will retain the character of discovery until offered for admission into evidence before the committee, at which time any proper objection will be timely.

It also should be noted that the Education and Labor Committee has adopted a rule to implement H. Res. 836 in anticipation of the House adopting the resolution.[45] The Committee rule, the text of which is attached as an appendix to this report, includes many provisions to clarify the rights of Members and witnesses. For instance, the Chairman or majority staff will be required to consult with the Ranking Minority Member or minority staff no less than three days before any notice or subpoena for a deposition is issued. Upon completion of such consultation, all Members of the Committee will receive written notice that a notice or subpoena for a deposition will be issued. At the deposition, a witness may be accompanied by counsel to advise of his or her rights. Counsel for the entity employing the deponent also may attend if the scope of the deposition is expected to cover actions taken as part of the deponent's employment.

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reports this year and last have focused on multiple-fatality accidents involving coal miners, 26 of the 56 deaths so far this year have been in coal mines and 30 have been in non-coal (metal and nonmetal mines), most of which have been at surface mines. *Id*.

[45] This is similar to the four previous circumstances when standing committees were given deposition authority. The committees promulgated their own rules governing the specific exercise of the deposition power granted by the House resolutions and rules. H.R. Rep. No. 105–658, at 17, 105th Cong., 2d Sess. (1998) (regarding staff deposition authority for the Committee on Education and Workforce); H.R. Rep. No. 105–139, at 33, 105th Cong., 1st Sess. (1997) (regarding staff deposition authority for the Committee on Government Reform and Oversight); 142 Cong. Rec. H1963 (daily ed. Mar. 7, 1996) (regarding staff deposition authority for the Committee on Government Reform and Oversight). In general, these committee rules have governed deposition notice requirements, the rights of witnesses and their counsel, the rights of committee members, the transcription of depositions, and the admission of deposition testimony into committee records.

The counsel may instruct a deponent not to answer a question if needed to preserve a privilege. If a witness refuses to answer a question and objects, the Chairman may rule on such objection after the deposition has adjourned. If the Chairman overrules any objection and directs the witness to answer any questions to which privilege objections were lodged, such ruling must be filed with the clerk of the Committee and provided to the Committee Members and the deponent no less than three days before it is implemented. If a Committee Member appeals in writing the ruling of the Chairman, then the appeal shall be preserved for Committee consideration.

Any depositions will have to be transcribed stenographically and also may be electronically recorded. Majority and minority staff shall receive copies of the deposition transcript at the same time. The electronic recording, however, shall not supersede the certified written transcript.

After receiving the initial transcript, Majority staff shall make it available to the deponent or deponent's counsel. No later than ten business days thereafter, the deponent may suggest any technical or substantive changes. Any substantive changes, however, must be suggested by the deponent in writing to the Committee and will be included as an appendix to the transcript. Majority and minority staff shall be provided with a copy of the final transcript at the same time.

The Chairman and Ranking Minority Member of the Education and Labor Committee shall consult regarding the release of deposition transcripts or any electronic recordings. If either objects in writing to a proposed release of a deposition transcript or recording, the matter shall be referred to the Education and Labor Committee for prompt resolution.

In short, the grant of staff deposition authority is an invaluable and not unprecedented power for congressional committees to exercise their obligations to conduct oversight and to legislate. House Resolution 836 proposes to grant to the Education and Labor Committee such authority as part of its investigation into the deaths of several individuals at the Crandall Canyon Mine this past August.

SECTION-BY-SECTION ANALYSIS OF THE RESOLUTION

Section 1 extends the investigative authority granted to the Committee on Oversight and Government Reform 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 the deaths of nine individuals that occurred at the Crandall Canyon Mine near Huntington, Utah, including the events that may have led to those deaths and into the administration of relevant laws by government agencies, including the Department of Labor and the Mine Safety and Health Administration, and into other related matters.

Clause 4(c)(3) of rule X of the Rules of the House of Representatives, as applied to the Education and Labor Committee by H. Res. 836, would allow the Education and Labor Committee to adopt a rule authorizing and regulating the taking of depositions by a member or counsel to the committee, including by issuing a subpoena. Rule X further states that a committee rule may provide

that a deponent be directed to subscribe to an oath or affirmation before a person authorized by law to administer oaths and affirmations. A committee rule shall ensure that the members and staff of the committee are accorded equitable treatment with respect to notice of and a reasonable opportunity to participate in any proceedings thereunder. Finally, rule X provides that deposition testimony retain the character of discovery until offered for admission into evidence before the committee, at which time any proper objection will be timely.

COMMITTEE CONSIDERATION

H. Res. 836 was introduced by Education and Labor Committee Chairman George Miller on December 4, 2007, and referred to the Committee on Rules. On December 5, 2007, the Committee on Rules held a hearing on H. Res. 836 and received testimony from: the Honorable George Miller, Chairman of the Committee on Education and Labor; the Honorable Howard "Buck" McKeon, Ranking Minority Member of the Committee on Education and Labor; and T.J. Halstead, Legislative Attorney, American Law Division, Congressional Research Service.

On December 5, 2007, the Committee on Rules met on H. Res. 836 in open session and ordered the resolution favorably reported to the House by a voice vote.

ROLLCALL VOTES

No record votes were taken during consideration of H. Res. 836.

COMPLIANCE WITH HOUSE RULE XIII

Statement of oversight findings and recommendations of the Committee

In accordance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the body of this report.

Congressional Budget Office cost estimate

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee states, with respect to H. Res. 836, that the Director of the Congressional Budget Office did not submit a cost estimate and comparison under section 402 of the Congressional Budget Act of 1974.

Statement of general performance goals and objectives

In accordance with clause 3(c) of rule XIII of the Rules of the House of Representatives, the goal of H. Res. 836 is to authorize tools necessary for the Committee on Education and Labor to conduct a full investigation into the deaths of nine individuals that occurred at the Crandall Canyon Mine near Huntington, Utah, including the events that may have lead to those deaths and into the administration of relevant laws by government agencies, including the U.S. Department of Labor and the U.S. Mine Safety and Health Administration, and into other related matters.

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.
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> 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.

APPENDIX

Text of Education and Labor Committee rule adopted on December 5, 2007:

RULE 24. DEPOSITION AUTHORITY

In accordance with the Committee receiving special authorization by the House for the taking of depositions in furtherance of a Committee investigation, the Chairman, upon consultation with the ranking minority member, may order the taking of depositions pursuant to notice or subpoena.

The Chairman or majority staff shall consult with the ranking minority member or minority staff no less than three business days before any notice or subpoena for a deposition is issued. Upon completion of such consultation, all members shall receive written notice that a notice or subpoena for a deposition will be issued.

A notice or subpoena issued for the taking of a deposition shall specify the date, time, and place of the deposition and the method or methods by which the deposition will be recorded.

A deposition shall be conducted by one or more members or Committee counsel as designated by the Chairman or ranking minority member.

A deposition shall be taken under oath or affirmation administered by a member or a person otherwise authorized to administer oaths and affirmations.

A deponent may be accompanied at a deposition by counsel to advise the deponent of the deponent's rights. Only members and Committee counsel, however, may examine the deponent. No one may be present at a deposition other than members, Committee staff designated by the Chairman or ranking minority member, such individuals as may be required to administer the oath or affirmation and transcribe or record the proceedings, the deponent, and the deponent's counsel (including personal counsel and counsel for the entity employing the deponent if the scope of the deposition is expected to cover actions taken as part of the deponent's employment). Observers or counsel for other persons or entities may not attend.

Questions in a deposition shall be propounded in rounds, alternating between the majority and minority. A single round shall not exceed 60 minutes per side, unless the members or counsel conducting the deposition agree to a different length of questioning. In each round, a member or Committee counsel designated by the Chairman shall ask questions first, and the member or Committee counsel designated by the ranking minority member shall ask questions second.

Any objection made during a deposition must be stated concisely and in a non-argumentative and non-suggestive manner. Counsel may instruct a deponent not to answer only when necessary to pre-

serve a privilege. In instances where the deponent or counsel has objected to a question to preserve a privilege and accordingly the deponent has refused to answer the question to preserve such privilege, the Chairman may rule on any such objection after the deposition has adjourned. If the Chairman overrules any such objection and thereby orders a deponent to answer any question to which a privilege objection was lodged, such ruling shall be filed with the clerk of the Committee and shall be provided to members and the deponent no less than three days before the ruling is implemented. If a member of the Committee appeals in writing the ruling of the Chairman, the appeal shall be preserved for Committee consideration. A deponent who refuses to answer a question after being directed to answer by the Chairman in writing may be subject to sanction, except that no sanctions may be imposed if the ruling of the Chairman is reversed on appeal. In all cases, when deposition testimony for which an objection has been made is offered for admission in evidence before the Committee, all properly lodged objections shall be timely and shall be considered by the Committee at that time.

Deposition testimony shall be transcribed by stenographic means and may also be video recorded. The Clerk of the Committee shall receive the transcript and any video recording and promptly forward such to minority staff at the same time the Clerk distributes such to other majority staff.

The individual administering the oath, if other than a member, shall certify on the transcript that the deponent was duly sworn. The transcriber shall certify that the transcript is a true, verbatim record of the testimony, and the transcript and any exhibits shall be filed, as shall any video recording, with the clerk of the Committee in Washington, DC. In no case shall any video recording be considered the official transcript of a deposition or otherwise supersede the certified written transcript. Depositions shall be considered to have been taken in Washington, DC, as well as the location actually taken, once filed with the clerk of the Committee for the Committee's use.

After receiving the transcript, majority staff shall make available the transcript for review by the deponent or deponent's counsel. No later than ten business days thereafter, the deponent may submit suggested changes to the Chairman. Committee majority staff may direct the Clerk of the Committee to note any typographical errors, including any requested by the deponent or minority staff, via an errata sheet appended to the transcript. Any proposed substantive changes, modifications, clarifications, or amendments to the deposition testimony must be submitted by the deponent as an affidavit that includes the deponent's reasons therefore. Any substantive changes, modifications, clarifications, or amendments shall be included as an appendix to the transcript. Majority and minority staff both shall be provided with a copy of the final transcript of the deposition with any appendices at the same time.

The Chairman and ranking minority member shall consult regarding the release of deposition transcript or electronic recordings. If either objects in writing to a proposed release of a deposition transcript or electronic recording or a portion thereof, the matter shall be promptly referred to the Committee for resolution.

A deponent shall not be required to testify unless the deponent has been provided with a copy of the Committee's rules, the House Resolution authorizing the taking of the deposition, and rule X of the Rules of the House of Representatives.

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