

GRANTING THE AUTHORITY PROVIDED UNDER CLAUSE 4(c)(3) OF RULE X
OF THE RULES OF THE HOUSE OF REPRESENTATIVES TO THE COM-
MITTEE ON EDUCATION AND LABOR FOR PURPOSES OF ITS INVESTIGA-
TION INTO UNDERGROUND COAL MINING SAFETY

MAY 19, 2010.—Referred to the House Calendar and ordered to be printed

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

R E P O R T

together with

MINORITY VIEWS

[To accompany H. Res. 1363]

The Committee on Rules, to whom was referred the resolution (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, 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. 1363 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 underground coal mining safety.

SUMMARY OF THE RESOLUTION

H. Res. 1363 applies to the investigation by the Committee on Education and Labor into underground coal mine operator compliance with the Federal Mine Safety and Health Act of 1977, as amended, 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. 1363, 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 pro-

vide 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

Recent incidents such as the August 2007 tragedy at the Crandall Canyon Mine near Huntington, Utah and the April 2010 explosion at the Upper Big Branch Mine in Raleigh County, West Virginia have demonstrated the urgency of improving safety conditions for miners.

Among the problems being investigated by the Education and Labor Committee is the rapidly growing number of mine safety enforcement cases currently pending before the Federal Mine Safety and Health Review Commission (FMSHRC), an independent agency that provides administrative trial and appellate review of contested citations, penalties, and worker retaliation cases. As the result of stepped-up enforcement and tougher penalties after a spate of mine tragedies in 2005 and 2006, mine owners tripled the number of violations they appeal and are now litigating 67 percent of all penalties.¹ The backlog of cases FMSHRC must review has jumped from 2,100 in 2006 to approximately 16,000 in February, 2010.²

Because of this backlog, numerous mines that received safety citations, and might have otherwise been put on warning for possible addition to the Pattern of Violations (POV) list, have gone without such warning, pending final adjudication of their citations. It is possible that, had these mines received POV warnings, safety conditions would have improved significantly, as past experience indicates that mining companies make substantial improvements once warned of impending addition to the POV list. Upper Big Branch was one of the mines that, but for a lack of final adjudications on enough of its citations, would very likely have been warned or faced designation as having a Pattern of Violations. Several other mines owned by Massey Energy, Upper Big Branch's owner, also are on a Department of Labor list of such mines.

Summary of Congressional Investigation

The Committee on Education and Labor has been engaging in oversight and investigatory activities concerning safety conditions at underground coal mines, the administration of the laws governing mine safety, and the mining industry's compliance with the law.

The Committee's oversight activities in the summer of 2009 involved several months of conversations with stakeholders about the

¹Hearing on Reducing the Growing Backlog of Contested Mine Safety Cases Before the U.S. House Comm. on Educ. & Labor, 111th Cong., 2d Sess. (Feb. 23, 2010) (statement of Joseph A. Main, Asst. Sec. of Labor for Mine Safety and Health).

²*Id.* (statement of Mary Lu Jordan, Chairman, Federal Mine Safety and Health Review Commission).

backlog at FMSHRC, the causes of the backlog, and what the consequences of such a backlog might be.

On February 23, 2010, the Committee held an oversight hearing entitled “Reducing the Growing Backlog of Contested Mine Safety Cases.”³ Witnesses included: (1) Mary Lu Jordan, Chairman of FMSHRC; (2) Joe Main, Assistant Secretary of Labor for the Mine Safety and Health Administration; (3) Cecil Roberts, President of the United Mine Workers of America; and, (4) Bruce Waltzman, Senior Vice President for Regulatory Affairs for the National Mining Association.

Tragically, on April 5, 2010, an explosion at the Upper Big Branch Mine killed 29 coal miners. This disaster, the worst mine disaster in the United States since 1970, compelled the Committee to move from oversight activities into a broader investigation of underground mine safety. The Committee is investigating safety violations at mines generally, and specifically whether there are practices at the corporate level that are contributing to safety problems at the mine level.

The Committee also has issued a document request to several of the companies involved in underground mining that had the most mines (or the largest number of employees working in mines) with large numbers of citations that have not yet been finally adjudicated, and the most mines on the Pattern of Violations list. Moving forward, the Committee will continue speaking with the full range of industry participants and stakeholders, and examining relevant documents.

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.⁴ 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.⁵

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.⁶ More specifically, rule XI of the Rules of the House of Representatives provides that:

³Hearing on Reducing the Growing Backlog of Contested Mine Safety Cases Before the U.S. House Comm. on Educ. & Labor, 111th Cong., 2d Sess. (Feb. 23, 2010).

⁴*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).

⁵*McGrain*, 273 U.S. at 175.

⁶Rules of the House of Representatives, Rule XI, 111th Cong. (2009).

- Committees may set a quorum of no less than two Members for taking testimony and receiving evidence;⁷
- 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;⁸
- 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;⁹
- 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.¹⁰

Such tools, however, are not sufficient in all cases. In some investigations, 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.

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.¹¹ 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.¹² 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.¹³

The Committee on the Judiciary has been given Member and staff deposition authority several times in the last two Congresses. House Resolution 1448 in the 110th Congress and House Resolu-

⁷ House Rule XI cl. 2(h)(2).

⁸ *Id.* Cl. 2(k).

⁹ *cl.* 2(m)(1)(A).

¹⁰ *Id.* cl. 2(m)(1)(B).

¹¹ H. Res. 369, 104th Cong. (1996).

¹² H. Res. 167, 105th Cong. (1997).

¹³ H. Res. 507, 105th Cong. (1998).

tion 15 in the 111th Congress granted deposition authority for the Committee's inquiry into whether the House should impeach District Court Judge G. Thomas Porteus.¹⁴ House Resolution 424 in the 111th Congress granted the same authority for the Committee's impeachment inquiry concerning District Judge Samuel B. Kent.¹⁵ House Resolution 5 in the 111th Congress gave the Committee authority for its Members or counsel to take depositions related to the investigation into the firing of certain U.S. Attorneys.¹⁶

Also in the 110th and 111th Congresses, the standing rules of the House have authorized 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.¹⁷ 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.

Finally, the Committee on Education and Labor received deposition authority in the 110th Congress for purposes of its 2007–2008 investigation into the deaths of nine miners and rescue workers at the Crandall Canyon Mine near Huntington, Utah.¹⁸ These are just the most recent examples in which the House has permitted the staffs of standing committees to take depositions.¹⁹

It is this type of deposition authority that is proposed in H. Res. 1363 to be granted to the Education and Labor Committee. At the outset, it should be noted that the authority suggested in H. Res. 1363 is limited to the investigation of underground coal mining safety. The Committee on Rules believes that vigorous oversight is necessary to learn of any systemic problems in the industry so that solutions may be found to prevent future death and disability across the mining industry, the tragic importance of which is demonstrated by the recent Upper Big Branch Mine disaster.²⁰

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.

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-incrimi-

¹⁴ H. Res. 1448, 110th Cong. (2008); H. Res. 15, 111th Cong. (2009).

¹⁵ H. Res. 424, 111th Cong. (2009).

¹⁶ H. Res. 5, cl. 4(f), 111th Cong. (2009).

¹⁷ House Rule X cl. 4(c)(3).

¹⁸ H. Res. 836, 110th Cong. (2007).

¹⁹ 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).

²⁰ 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, 195 miners have died from January 1, 2007, through May 17, 2010. Mine Safety and Health Administration (2010), <http://www.msha.gov/stats/charts/allstates.pdf>.

nation or any other privilege. Claims of privilege can often be more fully and efficiently addressed in a deposition rather than at a public hearing.

The Education and Labor Committee's recent experience with deposition authority has demonstrated such authority's usefulness; the Committee indicates that deposition authority was important in conducting its successful investigation of the Crandall Canyon Mine disaster, which led to a criminal referral. Whether the Committee actually issued a subpoena for a deposition or not, witnesses' knowledge that the Committee could issue such a subpoena may have caused reluctant witnesses to cooperate. It also may have given cover to witnesses who wanted to aid the investigation but were afraid to be viewed as disloyal to their employers or become blacklisted by the mining industry as whistleblowers.

Finally, the deposition authority reflected in H. Res. 1363 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, when the Education and Labor Committee adopted its rules for the 111th Congress, it included a deposition procedure rule so that they would be able to expeditiously seek and exercise deposition authority in the event it were to become appropriate.²¹ Just as in the 110th Congress, the Education and Labor Committee's deposition 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.

A deponent may decline 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

²¹This is similar to a number of 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); H.R. Rep. No. 110-473, at 8, 110th Cong., 1st Sess. (2007) (regarding staff deposition authority for the Committee on Education and Labor). 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 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 will be preserved for Committee consideration.

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

After receiving the initial transcript, majority staff will 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 will 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 will 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 will 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 1363 proposes to grant to the Education and Labor Committee such authority as part of its investigation into the safety conditions in underground coal mines.

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 underground coal mine operator compliance with the Federal Mine Safety and Health Act of 1977, as amended, 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. 1363, allows 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. 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. Any rule adopted by the Committee must 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.

Section 2 requires that, at the end of the second session of the 111th Congress, the Chair of the Education and Labor Committee transmit to the Rules Committee a report detailing how the Education and Labor Committee has used the authority granted by the resolution. The report will indicate: (1) the total number of depositions taken; (2) the number of depositions taken pursuant to subpoenas; and, (3) the name of each deponent that the Committee has publicly identified by name as a deponent. The Committee on Rules intends that the term “publicly identified” be interpreted broadly, so that deponents would be considered to have been identified if the transcript or electronic record of their deposition were released, or if they were identified by name in a committee report, press release, in another official Committee publication, or at a committee hearing.

COMMITTEE CONSIDERATION

H. Res. 1363 was introduced by Education and Labor Committee Chairman George Miller on May 18, 2010, and referred to the Committee on Rules. On May 19, 2010, the Committee on Rules held a hearing on H. Res. 1363 and received testimony from the Honorable George Miller, Chairman of the Committee on Education and Labor.

On May 19, 2010, the Committee on Rules met on H. Res. 1363 in open session and ordered the resolution favorably reported to the House by a non-record vote.

ROLL CALL VOTES

No record votes were taken during consideration of H. Res. 1363.

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. 1363, 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. 1363 is to provide the authority necessary for the Committee on Education and Labor to conduct a full investigation into underground coal mine operator compliance with the Federal Mine Safety and Health Act of 1977, as amended, and into other related matters.

MINORITY VIEWS

We share the Majority's concerns regarding the recent mining accidents. The most recent event, which took the lives of 29 West Virginia miners in one of the worst accidents in the last 40 years, demonstrates the need for vigorous Congressional oversight. Without a thorough investigation and evaluation, Congress will be unable to objectively determine whether the executive branch agencies charged with protecting miners are performing their job, and whether changes are needed to ensure that those agencies fulfill their obligations to miners, their families, and the public.

However, as we articulated in our views in the report to accompany H. Res. 836 in the 110th Congress (H. Rept. 110-473), we are troubled by the potential for abuse of staff deposition authority, and believe that it must only be granted sparingly, and with stringent oversight. It is essential that the ranking minority member always have the ability to meaningfully participate in the information gathering process, and have recourse when potential abuses occur.

We are pleased that we have not received reports of abuses in the recent instances where this authority was granted to the Education and Labor Committee and the Committee on the Judiciary. We believe that the rule adopted by the Committee on Education and Labor should represent the minimum standard for the use of staff deposition authority, and that even further protections for the Minority could be included.

We are encouraged by the inclusion of section 2 to this resolution. That section requires the Chairman of the Committee on Education and Labor to report back to the Committee on Rules on his 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.

However, we are concerned that—outside of the context of judicial impeachment—the Committee on Education and Labor is the only committee to request and receive this authority under the current Majority. Other committees are able to maintain robust oversight and investigations without the use of staff deposition authority. For instance, the Committee on Energy and Commerce was able to pursue its recent investigation into the performance of Toyota and the National Highway Traffic Safety Administration without the use of this authority. Similarly, the Financial Services Committee also conducted its investigations into the collapse of the financial markets with the regular authority granted to standing committees. Frankly, we are unsure why the Committee on Education and Labor continues to request this authority when other committees appear to be able to pursue vigorous and thorough investigations without it.

With that said, we will not oppose the granting of staff deposition authority in this instance. This resolution is narrowly tailored, and the rules of the Committee on Education provide a modicum of protection for both deponents and the Minority.

DAVID DREIER.
LINCOLN DIAZ-BALART.
PETE SESSIONS.
VIRGINIA FOXX.

APPENDIX

Text of Education and Labor Committee rule adopted on January 21, 2009:

RULE 10. DEPOSITION PROCEDURE

(a) In accordance with the Committee receiving authorization by the House of Representatives for the taking of depositions in furtherance of a Committee investigation, the Chair, upon consultation with the ranking minority member, may order the taking of depositions pursuant to notice or subpoena as contemplated by this rule.

(b) The Chair 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. After such consultation, all members shall receive written notice that a notice or subpoena for a deposition will be issued.

(c) A notice or subpoena issued under this rule shall specify the date, time, and place of the deposition and the method or methods by which the deposition will be recorded. Prior to testifying, a deponent shall be 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.

(d)(1) A deposition shall be conducted by one or more members or Committee counsel as designated by the Chair or ranking minority member.

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

(e) 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 Chair 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.

(f)(1) Unless the majority, minority, and deponent agree otherwise, 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 Chair shall ask questions first, and the member or Committee

counsel designated by the ranking minority member shall ask questions second.

(2) Any objection made during a deposition must be stated concisely and in a non-argumentative and non-suggestive manner. Deponent may refuse to answer a question only to preserve a privilege. When the deponent has objected and refused to answer a question to preserve a privilege, the Chair may rule on any such objection after the deposition has adjourned. If the Chair 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 enforced at a reconvened deposition. If a member of the Committee appeals in writing the ruling of the Chair, the appeal shall be preserved for Committee consideration. A deponent who refuses to answer a question after being directed to answer by the Chair in writing may be subject to sanction, except that no sanctions may be imposed if the ruling of the Chair 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 then made shall be timely and shall be considered by the Committee prior to admission in evidence before the Committee.

(g) 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.

(h) The individual administering the oath 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 no case shall any video recording be considered the official transcript of a deposition or otherwise supersede the certified written transcript.

(i) 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 Chair. 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, a copy of which shall be promptly forwarded to minority staff.

(j) The Chair and ranking minority member shall consult regarding the release of a 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.

