

RESOLUTION OF INQUIRY REQUESTING THE PRESIDENT AND DIRECTING
 THE ATTORNEY GENERAL TO TRANSMIT, RESPECTIVELY, CERTAIN DOC-
 UMENTS TO THE HOUSE OF REPRESENTATIVES RELATING TO RAY EPPS

OCTOBER 14, 2022.—Referred to the House Calendar and ordered to be printed

Mr. NADLER, from the Committee on the Judiciary,
 submitted the following

ADVERSE REPORT

together with

MINORITY VIEWS

[To accompany H. Res. 1356]

The Committee on the Judiciary, to whom was referred the reso-
 lution (H. Res. 1356) of inquiry requesting the President and di-
 recting the Attorney General to transmit, respectively, certain doc-
 uments to the House of Representatives relating to Ray Epps, hav-
 ing considered the same, report unfavorably thereon with an
 amendment and recommend that the resolution not be agreed to.

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Strike all that follows after the resolving clause and insert the
 following:

That President Joseph R. Biden is requested, and Attorney General Merrick B.
 Garland are directed, to transmit, respectively, to the House of Representatives, not
 later than 14 days after the date of the adoption of this resolution, copies of all doc-
 uments, memoranda, advisory legal opinions, notes from meetings, audio recordings,
 records (including telephone and electronic mail records), correspondence, and other

communications, or any portion of any such communications, to the extent that any such one or more items are within the possession of President Joseph R. Biden or Attorney General Merrick B. Garland, respectively, and refer to Ray Epps.

Purpose and Summary

H. Res. 1356 is a non-binding resolution of inquiry that requests President Joe Biden and directs Attorney General Merrick Garland to provide certain documents to the House of Representatives relating to Ray Epps.

Background and Need for the Legislation

Resolutions of inquiry, if properly drafted, are given privileged parliamentary status in the House. This means that, under certain circumstances, a resolution of inquiry can be considered on the House floor even if the committee to which it was referred has not ordered the resolution reported and the majority party's leadership has not scheduled it for consideration. Clause 7 of rule XIII of the Rules of the House of Representatives requires the committee to which the resolution is referred to act on the resolution within 14 legislative days, or a motion to discharge the committee from consideration is considered privileged on the floor of the House. In calculating the days available for committee consideration, the day of introduction and the day of discharge are not counted.¹ The 117th Congress operated under temporary procedures “that effectively ‘turned off’ the 14-day deadline” for resolutions of inquiry until July 19, 2022.²

Under the Rules and precedents of the House, a resolution of inquiry is a means by which the House requests information from the President of the United States or the head of one of the executive departments. According to Deschler's Precedents, it is a “simple resolution making a direct request or demand of the President or the head of an executive department to furnish the House of Representatives with specific factual information in the possession of the executive branch.”³ Such resolutions must ask for facts, documents, or specific information; they may not be used to request an opinion or require an investigation.⁴ Resolutions of inquiry are not akin to subpoenas; they have no legal force and thus compliance by the Executive Branch with the House's request for information is purely voluntary.

According to a study conducted by the Congressional Research Service (CRS), between 1947 and 2017, 313 resolutions of inquiry were introduced in the House.⁵ Within this period, CRS found that “two periods in particular, 1971–1975 and 2003–2006, saw the highest levels of activity on resolutions of inquiry” and that “the Committees on Armed Services, Foreign Affairs, and the Judiciary have received the largest share of references.”⁶ CRS further found

¹Wm. Holmes Brown, et al., *House Practice: A Guide to the Rules, Precedents, and Procedures of the House* ch. 49, Sec. 6, p. 834 (2011).

²Christopher M. Davis, *Resolutions of Inquiry in the House*, CONG. RSCH. SERV. 1 (Jul. 21, 2022), <https://crsreports.congress.gov/product/pdf/IN/IN10661/4>.

³7 *Deschler's Precedents of the United States House of Representatives*, H. Doc. No. 94–661, 94th Cong., 2d Sess., ch. 24, § 8.

⁴A resolution that seeks more than factual information does not enjoy privileged status. Brown, *supra* note 1, at 833–34.

⁵Christopher M. Davis, *Resolutions of Inquiry: An Analysis of Their Use in the House, 1947–2017*, CONG. RSCH. SERV. R40879, at i (Nov. 9, 2017), <https://sgp.fas.org/crs/secretary/R40879.pdf>.

⁶*Id.*

that “in recent Congresses, such resolutions have overwhelmingly become a tool of the minority party in the House.”⁷

A Committee has a number of choices after a resolution of inquiry is referred to it. It may vote on the resolution up or down as introduced or it may amend it, and it may report the resolution favorably, unfavorably, or with no recommendation. The fact that a committee reports a resolution of inquiry adversely does not necessarily mean that the committee opposes looking into the matter. In the past, resolutions of inquiry have frequently been reported adversely for several reasons. The two most common reasons are substantial compliance and competing investigations.

H. Res. 1356 was introduced by Representative Paul Gosar (R-AZ) on September 15, 2022. The resolution seeks information related to Ray Epps in the possession of the President and the Attorney General.

The individual that is the focus of this resolution of inquiry is the subject of a baseless conspiracy theory that alleges he was an FBI plant in the crowd on January 6, 2021, who instigated the assault on the U.S. Capitol.⁸

Ray Epps was a Donald Trump supporter who traveled from Arizona to Washington, D.C. to participate in the January 6th rally. Right-wing message boards, conservative media, former President Trump, and some Members of Congress have spread an alternative narrative alleging that Mr. Epps, acting on behalf of the government, was responsible for the insurrection by egging on otherwise peaceful Trump supporters.⁹ As a result of this misinformation, Mr. Epps has received death threats, has lost his business, and has been forced to move away from his home in Arizona.¹⁰ This resolution, rather than seeking information that would move the January 6th investigation forward, instead would perpetuate this conspiracy theory and bring further harm to Mr. Epps.

In addition to serving as an opportunity to further spread misinformation, this resolution of inquiry is a waste of this Committee’s valuable time and resources. The January 6th Committee interviewed Mr. Epps twice in connection with its overall investigation of the insurrection.¹¹ A Republican on that Committee, Representative Adam Kinzinger (R-IL) said, “The narrative on Jan. 6 has been that it’s first antifa, or patriots who love their country, maybe crisis actors, def false flag operatives, or now FBI agents . . . Take your pick. Truth is they were rioters incited by lies. And RAY is no fed. Just another misled man.”¹²

By focusing the narrative on a disproven conspiracy theory, Donald Trump, some Republicans in Congress, and conservative media personalities are refocusing the conversation around January 6th on a single man, supposedly representing the government, and away from the mistakes of Republicans who spurred the attack. The thesis that the insurrection was a protest that got out of con-

⁷*Id.*

⁸Alan Feuer, A Trump Backer’s Downfall as the Target of a Jan. 6 Conspiracy Theory, *NEW YORK TIMES* (Jul. 13, 2022).

⁹*Id.*

¹⁰*Id.*

¹¹*Id.*

¹²David Knowles, “Rep. Kinzinger looks to put the Ray Epps conspiracy theory to bed once and for all,” *YAHOO* (Jan. 12, 2022).

trol—one that could be influenced by a single man—is not backed up by the facts.

The insurrectionists at the Capitol on January 6th came prepared for an attack. The insurrection was well documented, both in media coverage and through participants' cell phone recordings. These videos clearly show the crowd outside the Capitol was armed and prepared to engage in violence. Furthermore, the January 6th Committee has discovered that far-right extremist members of the Oath Keepers stashed weapons around the DC area in advance of the march on the Capitol.¹³

Conspiracy theories like the one at the heart of H. Res. 1356 are designed to excuse people who break the law, just because they broke the law in support of former President Donald Trump. Many of the over-390 people who have pleaded guilty to their role in the insurrection have cited loyalty to Donald Trump as the driving reason behind the attack on the Capitol.¹⁴ These individuals believed they were acting on behalf of Donald Trump—not Ray Epps. The resolution also keeps the American public from getting to the truth by diverting focus away from the fact-finders on the January 6th Committee and potentially interfering with ongoing criminal investigations.

The Judiciary Committee will investigate any credible allegations of misconduct by the Executive Branch to the extent such allegations fall within this Committee's jurisdiction. However, the Committee will not do so through politically charged resolutions of inquiry that could jeopardize the integrity of ongoing investigations. The Judiciary Committee and the House overall should not needlessly request information that furthers conspiracy theories and moves us away from the truth.

Hearings

The Committee on the Judiciary held no hearings on H. Res. 1356.

Committee Consideration

On September 21, 2022, the Committee met in open session and ordered the resolution, H. Res. 1356, unfavorably reported with an amendment by a rollcall vote of 22 to 13, a quorum being present.

Committee Votes

In compliance with clause 3(b) of House rule XIII, the following rollcall vote occurred during the Committee's consideration of H. Res. 1356:

1. A motion to report H. Res. 1356 unfavorably passed by a rollcall vote of 23 to 13. The vote was as follows:

¹³Alexander Mallin and Will Steakin, "Oath Keepers stashed weapons at hotel for potential Jan. 6 violence, prosecutors indicate," ABCNEWS (Apr. 13, 2022).

¹⁴Madison Hall, "396 rioters have pleaded guilty for their role in the Capitol insurrection so far. This table is tracking them all," YAHOO (Sep. 21, 2022).

Roll Call No. 8

Date: 9/21/22

COMMITTEE ON THE JUDICIARY
House of Representatives
117th Congress

Subject: Motion to report H.RES. 1356 Unfavorably to the House

PASSED
 FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)	✓		
Zoe Lofgren (CA-19)			
Sheila Jackson Lee (TX-18)	✓		
Steve Cohen (TN-09)	✓		
Hank Johnson (GA-04)	✓		
Ted Deutch (FL-22)			
Karen Bass (CA-37)	✓		
Hakeem Jeffries (NY-08)			
David Cicilline (RI-01)	✓		
Eric Swalwell (CA-15)	✓		
Ted Lieu (CA-33)	✓		
Jamie Raskin (MD-08)	✓		
Pramila Jayapal (WA-07)	✓		
Val Demings (FL-10)	✓		
Lou Correa (CA-46)	✓		
Mary Gay Scanlon (PA-05)	✓		
Sylvia Garcia (TX-29)	✓		
Joseph Neguse (CO-02)	✓		
Lucy McBath (GA-06)	✓		
Greg Stanton (AZ-09)	✓		
Madeleine Dean (PA-04)	✓		
Veronica Escobar (TX-16)	✓		
Mondaire Jones (NY-17)	✓		
Deborah Ross (NC-02)	✓		
Cori Bush (MO-01)	✓		
	AYES	NOS	PRES.
Jim Jordan (OH-04)		✓	
Steve Chabot (OH-01)		✓	
Louie Gohmert (TX-01)			
Darrell Issa (CA-50)		✓	
Ken Buck (CO-04)		✓	
Matt Gaetz (FL-01)		✓	
Mike Johnson (LA-04)		✓	
Andy Biggs (AZ-05)			
Tom McClintock (CA-04)		✓	
Greg Steube (FL-17)			
Tom Tiffany (WI-07)		✓	
Thomas Massie (KY-04)		✓	
Chip Roy (TX-21)			
Dan Bishop (NC-09)		✓	
Michelle Fischbach (MN-07)		✓	
Victoria Spartz (IN-05)			
Scott Fitzgerald (WI-05)		✓	
Cliff Bentz (OR-02)		✓	
Burgess Owens (UT-04)			
	AYES	NOS	PRES.
TOTAL	22	13	

Committee Oversight Findings

In compliance with clause 3(c)(1) of House rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of House rule X, are incorporated in the descriptive portions of this report.

Committee Estimate of Budgetary Effects

Pursuant to clause 3(d)(1) of House rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

New Budget Authority and Congressional Budget Office Cost Estimate

Pursuant to clause 3(c)(2) of House rule XIII and section 308(a) of the Congressional Budget Act of 1974, and pursuant to clause 3(c)(3) of House rule XIII and section 402 of the Congressional Budget Act of 1974, the Committee has requested by not received from the Director of the Congressional Budget Office a budgetary analysis and a cost estimate of this resolution.

Duplication of Federal Programs

Pursuant to clause 3(c)(5) of House rule XIII, no provision of H. Res. 1356 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of House rule XIII, H. Res. 1356 requests President Biden and directs Attorney General Garland to transmit to the House of Representatives documents relating to Ray Epps.

Advisory on Earmarks

In accordance with clause 9 of House rule XXI, H. Res. 1356 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI.

Section-by-Section Analysis

The following discussion describes the resolution as reported by the Committee.

H. Res. 1356, a non-binding resolution of inquiry, requests President Joe Biden and directs Attorney General Merrick Garland to transmit to the House of Representatives documents relating to Ray Epps.

Minority Views

H. Res. 1356 requests the President and directs the Attorney General, respectively, to provide the House of Representatives with documents and communications in their possession referring to Ray Epps.

Questions remain concerning Ray Epps’s actions prior to the events at the U.S. Capitol on January 6, 2021. In a video taken on January 5, Epps appeared to encourage people to go into the Capitol the following day, shouting, “We need to go into the Capitol” and “I’m probably going to go to jail for it, OK? Tomorrow, we need to go into the Capitol.”¹ The video also shows the crowd around Epps chanting, “fed”—implying that the crowd believed Epps was a federal agent or was working on behalf of a federal law-enforcement agency. There are also videos of Epps on January 6, 2021, standing outside the Capitol speaking with other protestors just before the crowd began to move past the barricades and towards the Capitol.² Epps was reportedly on the FBI’s Most Wanted list in connection with the events of January 6 but was removed from the list on July 1, 2021, for unknown reasons.³

In January 2021, a reporter spoke with Epps, who admitted to being in Washington, D.C. during the relevant period.⁴ When the reporter asked Epps whether he made the comment of “we need to go into the Capitol,” Epps replied, “The only thing that meant is we would go in the doors like everyone else. It was totally, totally wrong the way they went in.”⁵ Epps denied doing anything wrong. Several months later, reporters from the *Daily Mail* visited Epps on his property outside in Arizona and Epps told the reporters to leave.⁶

Representative Thomas Massie (R-KY) and Senator Ted Cruz (R-TX) have asked Biden Administration officials whether there were federal agents or confidential informants involved in the events surrounding January 6, 2021. During a House Judiciary Committee hearing on October 21, 2021, Rep. Massie asked Attorney General Merrick Garland: “Can you tell us—without talking about particular incidents or particular videos—how many agents or assets of the federal government were present on January 6? Whether they agitated to go into the Capitol and if any of them did?”⁷ In response, Attorney General Garland stated, “I’m not going to comment on an investigation that’s ongoing.”⁸ During a hearing of the Senate Judiciary Committee on January 11, 2022, Senator Ted Cruz asked then-FBI Assistant Executive Director Jill Sanborn: “Did federal agents or those in service of federal agents actively encourage violent and criminal conduct on Jan. 6?”⁹ In re-

¹Miss N0b0dy (@MissN0b0dy1), Twitter, (Jan. 5, 2021, 10:31 PM), <https://twitter.com/MissN0b0dy1/status/1346660587636477954>.

²Anne Ryman, *Arizona man went to Washington day of Capitol riot, appears to talk about plans in video*, AZ CENTRAL (Jan. 11, 2021), <https://www.azcentral.com/story/news/local/arizona/2021/01/11/fbi-capitol-investigation-arizona-trump-supporter/6624406002/>.

³Tim Hains, *Will Cain: So Where Has January 6 “FBI Most Wanted” Ray Epps Been? “The Daily Mail” Found Him On His Ranch In Arizona*, REALCLEAR POLITICS (Dec. 29, 2021), https://www.realclearpolitics.com/video/2021/12/29/will_cain_so_where_has_january_6_fbi_most_wanted_ray_epps_been_the_daily_mail_found_him_on_his_ranch_in_arizona.html.

⁴Ryan, *supra* note 2.

⁵*Id.*

⁶Hains, *supra* note 3.

⁷*Oversight of the Department of Justice, Hearing Before the H. Comm. on the Judiciary*, 117th Cong. (2021); Anne Ryman, *Arizona man who was at U.S. Capitol Jan. 6 featured in video during House hearing with AG Merrick Garland*, AZ CENTRAL (Oct. 22, 2021), <https://www.azcentral.com/story/news/local/arizona/2021/10/22/arizona-man-capitol-riot-house-hearings-thomas-massie-merrick-garland/6135771001/>.

⁸*Id.*

⁹*The Domestic Terrorism Threat One Year After January 6, Hearing Before the S. Comm. on the Judiciary*, 117th Cong. (2022); Hannah Grossman, *Cruz slams ‘arrogance’ of FBI to stonewall his Jan. 6 questions: ‘Did they actively solicit illegal conduct?’*, FOX NEWS (Jan. 12, 2022), <https://www.foxnews.com/media/ted-cruz-fbi-arrogance-january-6>.

sponse, Sanborn testified, “Not to my knowledge, sir.”¹⁰ Senator Cruz then asked, “Was Ray Epps a fed?” and Sanborn responded by saying, “Sir, I cannot answer that question.”¹¹

On January 11, 2022, the Democrat-run January 6th Select Committee issued a statement confirming that Epps had testified to the committee. The statement read, “The Select Committee is aware of unsupported claims that Ray Epps was an FBI informant based on the fact that he was on the FBI Wanted list and then was removed from that list without being charged. The Select Committee has interviewed Mr. Epps. Mr. Epps informed us that he was not employed by, working with, or acting at the direction of any law enforcement agency on January 5th or 6th or at any other time, and that he has never been an informant for the FBI or any other law enforcement agency.”¹² According to the *Washington Examiner*, Chairman Bennie Thompson said that the Select Committee will release the Epps’ interview transcript “at some point.”¹³ To date, the January 6th Select Committee has not publicly released the transcript.

On September 21, 2022, the Committee considered H. Res. 1356 at a business meeting. Democrats refused to acknowledge the legitimate questions posed by Republican members about Ray Epps and the potential involvement of federal assets surrounding the events of January 6, 2021. Rather than receiving basic facts and information, Democrats voted to report H. Res. 1356 unfavorably to the House.

JIM JORDAN,
Ranking Member.



¹⁰Oversight of the Department of Justice, *supra* note 7.

¹¹*Id.*

¹²Emily Brooks, *Jan. 6 committee: Provocateur Ray Epps not FBI informant or agent*, WASH. EXAMINER (Jan. 11, 2022), <https://www.washingtonexaminer.com/news/jan-6-committee-provocateur-ray-epps-not-fbi-informant-or-agent>.

¹³Emily Brooks, *Ray Epps interview transcript with Jan. 6 panel to be public ‘at some point’*, WASH. EXAMINER (Jan. 21, 2022), <https://www.washingtonexaminer.com/news/ray-epps-interview-transcript-with-jan-6-panel-to-be-public-at-some-point>.