

Murtha	Royce	Sununu	Turner	Watts (OK)	Wexler
Myrick	Rush	Sweeney	Waters	Waxman	Wise
Nethercutt	Ryan (WI)	Tancred			
Ney	Ryun (KS)	Tauzin			
Northup	Sanford	Taylor (NC)			
Norwood	Sawyer	Terry			
Oxley	Saxton	Thomas			
Packard	Schaffer	Thompson (CA)			
Paul	Sensenbrenner	Thornberry			
Pease	Serrano	Thune			
Petri	Sessions	Tiahrt			
Pickering	Shadeeg	Toomey			
Pitts	Sherwood	Traficant			
Pombo	Shimkus	Udall (NM)			
Pomeroy	Shows	Upton			
Porter	Shuster	Vitter			
Portman	Simpson	Walden			
Pryce (OH)	Sisisky	Walsh			
Quinn	Skeen	Wamp			
Radanovich	Skelton	Watkins			
Ramstad	Smith (MI)	Weldon (FL)			
Rangel	Smith (NJ)	Weldon (PA)			
Regula	Smith (TX)	Weller			
Reynolds	Snyder	Whitfield			
Riley	Souder	Wicker			
Roemer	Spence	Wilson			
Rogan	Stabenow	Wolf			
Rogers	Stark	Wu			
Rohrabacher	Stearns	Young (AK)			
Ros-Lehtinen	Stump	Young (FL)			
Roukema	Stupak				

NAYS—130

Ackerman	Hilliard	Olver
Allen	Hinchey	Ortiz
Andrews	Holden	Owens
Baca	Hooley	Pallone
Baldacci	Hoyer	Pascrell
Baldwin	Inslee	Pastor
Barcia	Jefferson	Payne
Barrett (WI)	Johnson, E. B.	Pelosi
Becerra	Kaptur	Peterson (MN)
Bentsen	Kildee	Phelps
Berkley	Kilpatrick	Pickett
Berry	Kind (WI)	Price (NC)
Blumenauer	Kucinich	Rahall
Bonior	LaFalce	Reyes
Capuano	Lampson	Rivers
Carson	Larson	Rodriguez
Clay	Lee	Rothman
Clayton	Lewis (GA)	Roybal-Allard
Clyburn	Lofgren	Sabo
Costello	Lowey	Sanchez
Coyne	Luther	Sanders
Crowley	Maloney (CT)	Sandlin
Cummings	Maloney (NY)	Schakowsky
Cunningham	Mascara	Sherman
DeFazio	Matsui	Slaughter
DeGette	McCarthy (MO)	Spratt
DeLauro	McCarthy (NY)	Stenholm
Deutsch	McDermott	Strickland
Doggett	McGovern	Tanner
Doyle	McIntyre	Tauscher
Edwards	McNulty	Taylor (MS)
Evans	Menendez	Thompson (MS)
Farr	Metcalf	Thurman
Fattah	Millender	Tierney
Filner	McDonald	Towns
Ford	Miller, George	Udall (CO)
Frost	Minge	Velazquez
Gejdenson	Mink	Visclosky
Gephardt	Moakley	Watt (NC)
Gonzalez	Moran (VA)	Weiner
Green (TX)	Nadler	Weygand
Gutierrez	Napolitano	Woolsey
Hall (OH)	Oberstar	Wynn
Hill (IN)	Obey	

NOT VOTING—63

Archer	Emerson	McCollum
Baird	Forbes	McCrery
Billbray	Fowler	McIntosh
Boucher	Franks (NJ)	McKeon
Brown (FL)	Greenwood	Meek (FL)
Brown (OH)	Hansen	Mica
Burton	Hastings (FL)	Mollohan
Campbell	Hill (MT)	Neal
Canady	Hinojosa	Nussle
Collins	Hulshof	Ose
Conyers	Jackson-Lee	Peterson (PA)
Cox	(TX)	Salmon
Danner	Jenkins	Scarborough
Davis (FL)	Jones (OH)	Scott
Delahunt	Kasich	Shaw
Dickey	Kennedy	Shays
Dicks	Klink	Smith (WA)
Dingell	Lantos	Talent
Dooley	Lazio	
Dunn	Markey	

□ 1220

Messrs. MORAN of Virginia, OLVER, DEUTSCH, OWENS, and FARR of California changed their vote from "yea" to "nay."

Mr. WU changed his vote from "nay" to "yea."

So the motion was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

□

COMMITTEE ON RESOURCES
CONTEMPT RESOLUTION

(Mr. GEORGE MILLER of California asked and was given permission to revise and extend his remarks at this point in the RECORD.)

Mr. GEORGE MILLER of California. Mr. Speaker, I rise again in strong opposition to this Contempt of Congress resolution.

When there are so many important issues such as energy and health care and education policy which have languished in this Congress, it is ridiculous that this vendetta is taking the time of the House.

The crime charged in this resolution is the refusal of three witnesses to answer certain questions from Republican members of the Committee on Resources.

Let's be clear: these three individuals have worked to assure that the taxpayers receive a fair share of the royalties from oil companies drilling on public lands.

Those same oil companies, who have never received a Republican subpoena, have short-changed the taxpayers by billions of dollars in royalty under payments, as most recently evidenced by a total of \$438 million in settlement payments in litigation which inspired the committee's investigation.

We should be spending our time and resources in Congress on issues that really matter to the American people.

We should not use the vast powers of Congress to punish those who helped to blow the whistle on the oil company rip-offs and who, understandably, refused to cooperate with a rogue committee operating without regard to the House rules.

And we should not be burdening the U.S. Attorney, who has plenty of work to do combating serious crimes, with an ill-conceived contempt resolution based on an investigation so procedurally flawed that the criminal charges would not survive judicial review.

Let's start by making it clear what this contempt resolution is not about.

The question before the House is not whether the arrangement between the project on Government Oversight and two Federal employees to share royalty underpayment litigation awards was illegal or even improper.

Federal employees have been allowed, under certain circumstances, to participate as whistle blowers in False Claims Act litigation. In this case, the POGO arrangement is under active investigation by the Department of Justice.

But no one has been indicted, no one has been tried, and certainly no one has been convicted. For Congress to prejudice that process with premature conclusions of illegality would be irresponsible.

So, let us be clear what this resolution is about.

The real question before the House is whether three individuals who were subpoenaed as witnesses by the Committee on Resources should serve up to a year in prison for violating a Federal criminal statute.

As is the case with all criminal statutes, the three individuals cannot be convicted of Contempt of Congress unless guilt is proven beyond a reasonable doubt in a court of law.

Before we consider a resolution that could subject three citizens to criminal jeopardy, let's look carefully at the case the committee has brought before the House.

The courts have held the congressional process in strict scrutiny, and in 1983 acquitted the last person charged by the House with contempt.

In this investigation, the Committee Republicans have repeatedly failed to follow the House Rules. For over a year, they ignored House Rule XI governing investigations despite Democratic objections. They further violated House Rules by curbing the rights of Democratic members to question witnesses at hearings.

They abused those witnesses by, among other things, not allowing them to make opening statements at hearings, despite Democratic objections.

One Republican member called the Department of the Interior employee a "common thief" prior to his appearance before the committee.

In short, as we detail in the Dissenting Views, this partisan investigation has been biased, unfair, and was a rogue operation that violated the Rules of the House and of the committee.

Moreover, the committee Republicans failed to demonstrate—either to the witnesses or the Democratic members—a clear nexus between the questions and the purpose of the investigation. Specifically, they failed to establish a foundation for the questions that make them "pertinent" for purposes of applying the contempt statute to refusals to answer.

And the courts have insisted that questions must be "pertinent" at the time they are asked of a witness at a hearing. After the fact rationale is not sufficient.

My point in mentioning the procedural flaws in the committee's investigation is to show that there are many reasons for members to be very cautious before concluding that these three citizens are guilty of Contempt of Congress.

And unless members are convinced that the committee's process can withstand judicial scrutiny and the statutory elements of contempt have been proven beyond a reasonable doubt, then they should not vote for this resolution.

CONGRESS OF THE UNITED STATES,

Washington, DC, October 31, 2000.

STOP THE POGO PERSECUTION

DEAR COLLEAGUE: Today the House will unwisely reconsider the resolution (brought up on the floor last Friday and withdrawn by its sponsor) that charged three individuals with the crime of Contempt of Congress for failing to cooperate with a Committee on Resources investigation. This rare exercise of congressional power could subject these individuals to criminal prosecution and up to one year in jail.

This charge was prompted by the Project on Government Oversight's (POGO) decision

to share \$767,200 of a \$1.2 million False Claims Act settlement with two federal employees who had long worked to curb underpayments of royalties owed to the United States by oil companies. Faced with multi-billion dollar allegations of royalty rip-offs, 15 oil companies have reached settlements with the Department of Justice totaling \$438 million.

The Department of Justice is investigating whether the payments by POGO were inappropriate or illegal actions. Despite that review, the Resources Committee Majority has duplicated DOJ's effort and issued dozens of subpoenas, held multiple hearings, and consumed nearly two years and many tens of thousands of dollars searching for additional evidence of wrongdoing by POGO and its associates while proclaiming their alleged guilt.

And what about the oil companies who have paid \$438 million in settlement for cheating the American people—and especially children whose schools utilize royalty payments—out of the money they are owed? The Committee Majority has let the oil company misconduct go scot free:

ZERO—Hearings on oil royalty underpayments;

ZERO—Investigations of oil royalty underpayments;

ZERO—Subpoenas issued to oil companies.

ZERO—Condemnation of oil company royalty rip-offs.

To bring the full power of the committee down upon three individuals who have worked to curb oil company fraud without any effort to address billions of dollars in fraudulent underpayments is a blatant misuse of the Committee's resources and the Congress' time. For the House to further condemn these individuals because they declined on advice of counsel to respond to questions which were not pertinent in an abusive investigation which was not conducted in compliance with House rules, is beneath the standard Congress should use when employing the weighty hand of criminal contempt.

If the Majority insists on further discussion and votes on the Contempt resolution, we strongly advise you to vote "No" and protect private citizens and whistleblowers from such misuse of Congress' prosecutorial authority.

Sincerely,

George Miller, Edward Markey, Earl Blumenauer, Peter DeFazio, Bob Filner, Carolyn Maloney, Robert Underwood, Jay Inslee, Janice Schakowsky.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RESOURCES,
Washington, DC, October 31, 2000.

THE POGO INVESTIGATION: CONTEMPT FOR
INDIVIDUAL RIGHTS AND THE HOUSE RULES

DEAR COLLEAGUE: The Committee on Resources' Majority is asking you to vote for a resolution which charges three citizens with the statutory crime of contempt of Congress. Those three individuals, associated with the Project on Government Oversight (POGO), would be subject to criminal prosecution and up to one year in prison. The contempt resolution, which will come up again on the floor tonight, is a substitute for much broader charges of contempt reported by the committee.

Before you vote to send three people you've never ever seen to jail, consider whether you can rely on a rogue committee investigation that has abused the rights of witnesses and Members and failed to adhere to the House rules. In applying the criminal contempt statutes, the Supreme Court has required that a committee strictly follow its own rules and those of the House. *Yellin v.*

United States, 374 U.S. 109 (1962). Yet the conduct of the Committee on Resources' investigation related to the pending contempt resolution is so egregious that it would dishonor the House to subject it to judicial review. Among the many procedural deficiencies are the following:

(1) Failure to conduct the investigation within the jurisdiction of the committee under House Rule X, Clause 1. The Majority has not maintained a consistent purpose for its investigation within the scope of the committee's authority as delegated by the House. The Supreme Court has held that a clear line of authority for the committee and the "connective reasoning" to its questions is necessary to prove pertinency in statutory contempt. *Gojack v. United States*, 384 U.S. 702 (1966). Instead, the Majority has constantly shifted their explanations of what they are investigating and why. For example, on March 6, 2000, Chairman Young wrote to POGO's attorney to explain that broad subpoenas were necessary "to begin weighing the merits of those conflicting statements" made in civil litigation. How a probe of potential perjury in a lawsuit relates to the committee's legislative jurisdiction over oil royalty management laws and policies was not clear at the time to witnesses—who declined to answer questions which were not pertinent—and remains unclear to Democratic Members.

(2) Failure to follow House Rule XI, Clause 2(k) applicable to investigative hearing procedures. It was not until June 27, 2000—over a year after subpoenas were issued—that Chairman Young authorized Subcommittee Chairman Cubin to "begin an investigation to complement the oversight inquiry underway." This is a meaningless effort to draw a distinction between "oversight" and an "investigation" when no such distinction exists for purposes of House Rule XI, Clause 2. Accordingly, over the protests of Democratic Members, the Majority failed to follow House Rules applicable to the rights of witnesses in Subcommittee hearings held May 4, and May 18, 2000. These flaws range from the failure to provide witnesses with the committee and House Rules prior to their testimony, to the failure to go into executive session.

(3) Failure to allow Members to question witnesses under House Rule XI, Clause 2(j). On multiple occasions, the Subcommittee Chair prevented Democratic Members from exercising their rights to question witnesses, either under the five-minute rule or time allocated to the Minority under clause 2(j)(B).

(4) Failure to have a proper quorum under committee Rule 3(d). The Committee rules require a quorum of members, yet no such quorum was present during the hearings at the times of votes on sustaining the Subcommittee Chairman's rulings on whether questions were "pertinent."

(5) Failure to allow subpoenaed witnesses to make an opening statement under committee Rule 4(b). This rule states, "Each witness shall limit his or her oral presentation to a five-minute summary of the written statement, unless the Chairman, in conjunction with the Ranking Minority Member, extends this time period." In contravention of this rule and longstanding committee practice, the Chair refused to grant hearing witnesses the opportunity to make opening statements. Democratic objections were overruled.

(6) Failure to hold a hearing on the contempt issues. It is fundamentally unfair not to allow the parties charged with contempt an opportunity to explain their legal arguments for declining to answer questions or supply specific documents in contention. The Chair repeatedly refused the efforts of Democratic Members to recognize legal counsel to

address the Subcommittee on these issues. The failure to provide due process in a hearing to those accused of violating a criminal statute further weakens the Majority's case.

(7) Failure to fully inform Members of the committee. At the July 19th committee markup of the contempt resolution, the Majority failed to provide Members with the language of the contempt statutes. They cited no judicial standards or precedents of the House for applying those criminal statutes in a contempt proceeding. They did not adequately explain or refute the legal rationale that the subpoenaed parties, based on advice from counsel, had asserted when they declined to answer specific questions which were not pertinent to the investigation. And they neglected to explain to Members that the witnesses had appeared at hearings and produced thousands of pages of documents in compliance with multiple subpoenas.

No matter what wrongdoing may be alleged, all citizens of the United States have the right to expect that they be given fair treatment and due process in compliance with the rules. The real threat to the integrity of the House of Representatives stems from the abusive and irresponsible manner in which the Committee on Resources investigation was conducted. To subject this record to judicial review—in what would be the first contempt of Congress referral since 1983—could threaten to undermine the powers of the House to conduct legitimate oversight and investigations in the future.

By offering a substitute for the original resolution, the sponsors have tacitly acknowledged that the broad contempt charges of contempt reported by the committee were unsustainable. Especially when considered in the context of the myriad procedural deficiencies in this investigation, this latest change of direction ought to give Members ample reason to vote "NO" on the contempt charges.

Sincerely,

GEORGE MILLER,
Senior Democratic Member.

□

POSTPONING CONSIDERATION OF COMMITTEE ON RESOURCES CONTEMPT RESOLUTION

(Mr. YOUNG of Alaska asked and was given permission to address the House for 1 minute.)

Mr. YOUNG of Alaska. Mr. Speaker, as many of my colleagues know, we were going to take up the contempt report following this vote. We have decided not to do that until a later time. It is not because of the issue. It is because of the number of people that saw fit to leave this body on both sides of the aisle to return to their homes. It will be considered next time.

□

REPORT ON RESOLUTION WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON S. 2796, WATER RESOURCES DEVELOPMENT ACT OF 2000

Mr. GOSS, from the Committee on Rules, submitted a privileged report (Rept. No. 106-1022) on the resolution (H. Res. 665) waiving points of order against the conference report to accompany the Senate bill (S. 2796) to provide for the conservation and development of water and related resources, to authorize the Secretary of the Army to construct various projects for improvements to rivers and harbors of the