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House Committee Hearings: The “Minority Witness Rule”

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Summary

House Rule XI gives the minority party members of committees the right to have witnesses of their choosing called to testify on at least one day of any hearing scheduled by the majority. The rule has primarily served as an incentive to the majority party to see that the minority viewpoint is represented at hearings. Although the minority has a right to have witnesses testify on one hearing day, the committee majority maintains control over the scheduling, scope, and duration of that testimony.

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When a House committee or subcommittee holds a hearing, the minority party members of the panel have the right to call witnesses of their choosing to testify on at least one day of that hearing. Clause 2(j)(1) of House Rule XI—known as the “minority witness rule”—states:

Whenever a hearing is conducted by a committee on a measure or matter, the minority members of the committee shall be entitled, upon request to the chairman by a majority of them before the completion of the hearing, to call witnesses selected by the minority to testify with respect to that measure or matter during at least one day of hearing thereon.

If the minority’s request to call witnesses comes after a hearing has begun, it will necessitate the continuation of the hearing on an additional day to accommodate minority witnesses.¹ Rule XI, however, is rarely formally invoked to request an additional day of hearing. In practice, the rule has largely served as a “backstop” that gives the minority party a procedural recourse if a committee majority refuses to invite witnesses they request. In the vast majority of hearings, the majority does invite minority witnesses after consultation and negotiation with minority members and staff. In rare instances, however, a majority of the minority party members of a House committee or subcommittee have invoked Rule XI to schedule an additional day of hearings for their witnesses.²

Origin of the Minority Witness Rule

The minority witness rule was contained in Section 114(b) of the Legislative Reorganization Act of 1970³ and was first made a part of House rules at the beginning of the 92nd Congress (1971-1972).⁴ The report of the House Committee on Rules to accompany the 1970 act said of this provision:

By custom, committees ordinarily honor requests from their minority party members to call certain witnesses. Section 114(b) will make this a matter of right. It provides that during any hearing of a committee, those members shall be entitled, during at least one day of the hearing, to call as witnesses persons they select. We don’t look upon this as an authorization for delaying tactics but rather as good legislative practice.⁵

The suggestions that the minority party be granted an absolute right to call witnesses of their choosing at hearings had originated five years earlier with the Joint Committee on the Organization of Congress (JCOC). The JCOC was established on March 11, 1965, to study the organization and operation of Congress and recommend improvements “with a view toward strengthening the Congress, simplifying its operations, improving its relationship with other branches of the United States Government, and enabling it better to meet its responsibilities under the Constitution.”⁶ In its final report to the House and Senate, the joint committee argued that the

¹ Rule XI does not prescribe the form of the request, but in recent instances where the rule was invoked, the request was universally made by way of a letter signed by a majority of the minority committee members and presented to the chair before the conclusion of the hearing.

² See, for example, U.S. Congress, House Committee on Ways and Means, *Board of Trustees 2004 Annual Reports*, hearing, 108th Cong., 2nd sess., March 24 and April 1, 2004 (Washington: GPO, 2005); U.S. Congress, House Committee on the Judiciary, *Reauthorization of the USA PATRIOT Act*, hearing, 109th Cong., 1st sess., June 10, 2005 (Washington: GPO, 2005).

³ P.L. 91-510, 84 Stat. 1140.

⁴ U.S. Congress, House, *Constitution, Jefferson’s Manual, and Rules of the House of Representatives of the United States, One Hundred Fourteenth Congress*, H.Doc. 113-181, 113th Cong., 2nd sess. (Washington: GPO, 2015), §802.

⁵ U.S. Congress, House Committee on Rules, *Legislative Reorganization Act of 1970*, report to accompany H.R. 17654, 91st Cong., 2nd sess., H.Rept. 91-1215 (Washington: GPO, 1970), p. 6.

⁶ S.Con.Res. 2, 89th Congress.

practice of calling minority witnesses should be codified by both chambers of Congress. Their report stated:

It is normal procedure for witnesses representing both sides of the issue to give testimony at committee hearings. In those infrequent instances when witnesses representing the minority position are not allotted time, a minimum safeguard should exist to protect minority rights. The allocation on request of up to 1 day of hearings for witnesses chosen by the minority will furnish the needed protection.⁷

Although the recommendations of the JCOC were not initially enacted, their suggestions laid the foundation for those adopted in the Legislative Reorganization Act of 1970.⁸

Majority Prerogatives and Minority Witnesses

Although clause 2(j)(1) of House Rule XI gives the minority the right to witnesses of their choosing on one hearing day, the committee majority maintains control over the scheduling and logistics of that hearing. In addition, ordinary House and committee rules governing hearings—such as those mandating the questioning of witnesses under the five-minute rule—apply to any hearing in which minority witnesses testify.

It is up to the chairman of the committee to set the day and location of the requested hearing “under a reasonable schedule.”⁹ While the committee majority must invite the witnesses chosen by the minority, they are not precluded from inviting additional witnesses of their own choosing. The chairman maintains control over the logistics of how the minority witnesses will testify (i.e., individually or in panels) and also determines whether to administer the oath to the witnesses.¹⁰

As is the case with other witnesses, a minority witness may decline an invitation to testify. The committee can elect to issue a subpoena for testimony under the normal procedures of the House and the committee but is not required to do so.

The scope of an additional day of hearings under the minority witness rule is generally limited by the subject of the hearing. A committee is not required to permit testimony by minority witnesses or questioning by committee members or staff that strays from the announced subject of the hearing.¹¹ Of course, if the committee chooses, it may broaden the scope of its inquiry as it sees fit.

Notwithstanding the rights afforded the minority party under the minority witness rule, under clause 2(k)(8) of House Rule XI, a committee is “the sole judge of the pertinence of the testimony and evidence adduced at its hearing.” As such, a committee majority, applying a “reasonableness test,” retains the right to determine the relevance of testimony and the appropriate length of a Rule XI minority day of witnesses.

⁷ U.S. Congress, Senate, *Final Report of the Joint Committee on the Organization of the Congress*, S. Rept. 1414, 89th Cong., 2nd sess. (Washington: GPO, 1966), pp. 11-12.

⁸ For a brief history of House procedural reforms, see CRS Report RL31835, *Reorganization of the House of Representatives: Modern Reform Efforts*, by (name redacted), (name redacted), and (name redacted) .

⁹ William Holmes Brown, Charles W. Johnson, and John V. Sullivan, *House Practice: A Guide to the Rules, Precedents, and Procedures of the House*, 112th Cong., 1st sess. (Washington: GPO, 2011), p. 282.

¹⁰ Committee on Ways and Means, *Board of Trustees Annual Reports*, pp. 101-102.

¹¹ Rep. F. James Sensenbrenner, remarks in the House, *Congressional Record*, daily edition, vol. 151, June 16, 2005, p. H4647.

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