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RPTS MERCHANT

DCMN BURRELL

MARKUP OF H.RES. 449 AND H.RES. 462

WEDNESDAY, JUNE 10, 2009

House of Representatives,

Committee on Energy and Commerce,

Washington, D.C.

The committee met, pursuant to call, at 1:45 p.m., in Room 2123, Rayburn House Office Building, Hon. Henry A. Waxman [chairman of the committee] presiding.

Present: Representatives Waxman, Markey, Stupak, Degette, Capps, Harman, Schakowsky, Inslee, Butterfield, Barrow, Matsui, Christensen, Castor, Sarbanes, Space, Sutton, Braley, Barton, Upton, Stearns, Deal, Pitts, Walden, Terry, Myrick, Burgess, Blackburn, Gingrey, and Scalise.

Staff Present: Kristin Amerling, Chief Counsel; David Rapallo, General Counsel; Sharon Davis, Chief Legislative Clerk; Earley Green, Deputy Clerk; Jen Berenholz, Deputy Clerk; Karen

Lightfoot, Communications Director; Bruce Wolpe; Senior Advisor; Roger Sherman, Chief Counsel; Jeff Baran, Counsel; Mitchell Smiley, Special Assistant; Allison Corr, Special Assistant; Caitlin Haberman, Staff Assistant; Caren Auchman, Communications Advocate; Shannon Weinberg, Minority Counsel; Alan Slobodin, Minority Counsel; Lance Kotschwar, Minority General Counsel; Brian McCullough, Minority Professional Staff; Peter Spencer, Minority Professional Staff; Peter McKielty, Minority Legislative Assistant.

The Chairman. The committee will please come to order. Today the committee is considering two resolutions of inquiry, H.Res. 449 introduced by Representative Sensenbrenner and H.Res. 462 introduced by Representative LaTourette.

Pursuant to committee rule IX, the chairman and the ranking minority member will have 5 minutes each for an opening statement and any other member who wishes to make an opening statement will have 3 minutes. I would like to recognize myself first.

Today we are meeting to consider these two resolutions. They demand documents from the President and top agency officials regarding the Chrysler plant and the dealership closings and regarding the proposed finding by the Environmental Protection Agency that greenhouse gas emissions endanger public health and welfare.

I have serious concerns about how these resolutions have been pursued. A resolution of inquiry is a serious step that should be undertaken only if other efforts to obtain information from the executive branch have failed. In this case, however, our staff has been told that the resolution sponsors introduced these resolutions before even attempting to request documents from the administration. The sponsors also failed to contact this committee or the Subcommittee on Oversight and Investigations or any other subcommittee to request assistance on these matters.

I believe that rigorous and responsible congressional oversight is our congressional duty, but the resolutions before us do not represent responsible oversight. Demanding documents through resolutions before ever attempting to request them is a heavy handed and potentially counterproductive way to proceed.

I have written to the White House Counsel to obtain confirmation regarding what efforts were made by the resolution sponsors to obtain information from the executive branch. I have also asked for information regarding whether members would have been able to obtain through document requests some or all of the information sought through these resolutions, and I will review his responses as we continue to assess these issues.

Today, however, I ask that members join me in opposing the resolutions, not because oversight of the executive branch is not important, but because this is the wrong way to conduct oversight.

I would like to now recognize Mr. Barton for an opening statement.

Mr. Barton. Thank you, Mr. Chairman. First, let me say before I read from my prepared text the two resolutions notice of inquiry before the committee today, I knew of one of these, the Sensenbrenner one, several weeks ago, but it was my understanding that it was designed to be referred to the Climate Change Committee, not to this committee. So I didn't say anything to you or any of the other majority members, because I personally misinterpreted what Congressman Sensenbrenner told me and thought

it was going to another committee. So I will take full responsibility for the Sensenbrenner notice of inquiry for not realizing that it was under our committee's jurisdiction. Had I realized that, I would have spoken to you directly and to subcommittee Chairman Markey about it.

On the other notice of inquiry dealing with the Chrysler closing dealerships, I was not personally aware of it until informed, I believe yesterday or maybe the day before, that we were going to have this hearing, which as you know is required by the rules of the House. I did talk to the sponsor of that one, Congressman LaTourette, this morning on the House floor, and told him that we would be considering his resolution today and I thought that it had merit. So on the Sensenbrenner resolution I knew about it ahead of time but didn't realize it was coming to the committee, and that is my fault. On the LaTourette resolution I didn't know about it, but I do think it is serious. I think both of them are serious actually.

Let me now read from my prepared remarks. The resolutions seek documents and information that address two subjects of interest to the committee; the Congress and the American public. The Chrysler plant dealership closings and the Environmental Protection Agency's proposed findings that greenhouse gases, particularly carbon dioxide, are a danger to public health and welfare. The substance of the resolutions is worthy of serious discussion. They are not only relevant to our committee's

jurisdiction, but they involve issues that this committee should be investigating.

It also happens that both of these matters relate to current committee activity, which underscores the reasons why we should consider reporting, in my opinion, these resolutions favorably.

The resolution relating to the four Chrysler closings and the company's interaction with the U.S. Federal Government seeks a number of important documents. Working people are losing their jobs and they deserve to know who decided when, how, and why. Given the Federal Government's role in the bankruptcy and the ownership stake in the company, it would seem fair and transparent to provide the taxpayers with information relevant to their investment.

Included in this request would be documents relating to the 789 Chrysler dealerships scheduled for closure as announced this past May. I am very pleased that this past Friday, or this coming Friday, our Subcommittee on Oversight and Investigation is holding a hearing entitled "GM and Chrysler Dealership Closures and Restructuring," which I hope will begin to shed a light on these worrisome closures around the Nation.

Many of us have heard from our constituents. In fact, I have a dealer from my district who is flying up and hopefully may be allowed to testify at subcommittee Chairman Stupak's hearing, because many of us are losing dealers in our own districts. I am puzzled by the idea that reducing the supply of dealerships to

restrict competition is going to help Chrysler Corporation and its workers. If people aren't buying cars at today's price, how does it help to restrict competition and raise car prices in the future?

To understand what is going on here we need to know the facts concerning the process, the transparency, if any, and the criteria, if any, that were used to determine these actions. The answers to those questions should show what role the government has played in laying off an estimated 27,000 plant workers alone at Chrysler, not to mention those working at the 800 dealerships that are closing.

On the EPA endangerment finding, this relates specifically to our ongoing debate in the committee about the value and effectiveness of America's global warming policy in general and the role of the EPA in particular. Concerns about the potential regulatory impact of an endangerment finding are not a new issue for the Committee on Energy and Commerce. I have recently urged a number of my colleagues to write the EPA urging it to extend the comment period on this proposed endangerment finding for another 60 days. I also asked the EPA Administrator when she testified before our, I think Mr. Markey's subcommittee, about your climate change proposal on the endangerment finding, she gave to my opinion a very unsatisfactory verbal answer that should be worthy of follow-up on a more serious nature.

Members are concerned about this finding of endangerment,

with its risk of intrusive regulation which threatens the survival of thousands of American small businesses already struggling in one of the most difficult economic climates we have had in the last 20 to 30 years. Information provided through this resolution of inquiry would help the committee evaluate the process and risk analysis performed by the EPA in reaching its conclusion and developing its findings.

I do want to close, Mr. Chairman, on saying that I understand your opening remarks about the seriousness of a notice of inquiry. I share those. I do hope that in the discussion that follows the opening statements we can come to a mutually agreeable decision on how to proceed.

I will point out that on the LaTourette notice of inquiry another committee that has some jurisdiction, the Financial Services Committee, I don't know if it reported out an identical notice of inquiry, but one similar, on a bipartisan 63 to nothing basis.

So hopefully we can come to a meeting of the minds on what to do about these issues. I do want to apologize again on the Sensenbrenner inquiry. I did know about it, I did not know that it was coming to this committee. And with that I yield back.

The Chairman. Thank you, Mr. Barton. We have opening statements on the two resolutions or members can take statements on each one because we have to consider each one separately. How would the members -- let me just ask if any members want to make

an opening statement on both resolutions, or if they want we can just go to each resolution, debate it, and then vote. Let's do that.

The first one we will consider is H.Res. 449. The Chair now calls up H.Res. 449, and without objection the first reading of the resolution will be dispensed with.

[The information follows:]

******** COMMITTEE INSERT ********

The Chairman. Does any member seek recognition? Mr. Markey.

Mr. Markey. Thank you, Mr. Chairman, very much. I oppose this resolution. And I oppose it because it uses the heavy hand of an inquiry resolution without first going through regular channels.

As chairman of the Select Committee on Energy Independence and Global Warming, I actually worked very closely last Congress with Ranking Member Sensenbrenner on a document request to the EPA. In fact, that document request was also related to the EPA's response to the Massachusetts v. EPA Supreme Court decision, and ultimately turned into the very first subpoena that I ever issued in 32 years in Congress. The vote on that subpoena in the select committee was both unanimous and bipartisan.

Now, Mr. Barton is actually making reference to the fact that he did not realize that this resolution, Mr. Sensenbrenner's resolution, would come before this committee. And to tell you the truth, I did not know about this resolution until one hour ago when Mr. Sensenbrenner sent a letter to me notifying me of this request.

Let me just say this. In contrast to the privileged resolutions before this committee, the select committee work made extensive attempts over a period of months leading to the issuance of the subpoena and we did so in a bipartisan fashion.

First, we sent a letter and made a personal request to then

EPA Administrator Steven Johnson requesting the materials in January of 2008. Then in March of 2008, after repeated assurances by EPA staff that they would work with us to provide the documents in advance of a select committee hearing, EPA informed us that it would not do so. So we sent another letter to the EPA requesting the materials. We then had a hearing at which Administrator Johnson appeared. I again requested the documents, and he refused.

In April, after working with Mr. Sensenbrenner and the minority, the select committee voted to authorize the issuance of a subpoena to EPA. We then spent the next 2 months working with the minority, EPA, and the White House to try to reach an accommodation, and it wasn't until the end of June, a 6-month period, that we finally saw the documents that we wanted to see, but we kept it in a bipartisan environment the entire way.

That is not what happened here. As I earlier pointed out, I only received notice of this one hour ago. By the way, it is the exact same subject material that we were handling last year in the select committee in terms of this type of information, and the notification was sent to me well after these inquiry resolutions were introduced and the markup was noticed.

So I just think from a procedural perspective that we should reject this. It is just not the way in which the kind of conversation that we need to have on this committee should be conducted, and it actually is not in concert with the way in which

discussions on the very same subject material was conducted in the select committee.

And so I urge a no vote. I think it is the only way in which we are going to be able to comport this committee in a way that is consistent with its traditions. And I yield back the balance of my time.

The Chairman. Further recognition on H.Res. 449. The gentleman from Georgia.

Mr. Gingrey. Thank you, Mr. Chairman. Mr. Chairman, we are at a critical time in our Nation's history and we face unprecedented challenges, yet it seems that up until this point this Congress has been content with either allowing the administration to act unilaterally or simply provide the administration with trillion dollar blank checks. Mr. Chairman, I remember when the current majority accused the current minority of demonstrating similar neglect during a previous administration.

This committee, the Energy and Commerce Committee, has an opportunity today to report out two resolutions that will preserve this Congress' oversight authority, an authority and responsibility that I know, Mr. Chairman, you hold near and dear to your heart, as do all of us. And House Resolution 449 will ensure that we have a better understanding of the EPA's greenhouse gas determination that would enable the administration to regulate carbon dioxide and impose substantial regulatory and financial burdens on the American people without one iota of congressional

approval or input despite the fact that we spent literally 4 days a couple of weeks ago marking up that very same legislation. So I think it is very appropriate, and for the EPA to determine that carbon dioxide is a detriment to one's health. Indeed, if you don't have enough carbon dioxide in your body you will pass out, and that is what happens to people when they hyperventilate. So we need to understand how they came to the conclusion that this is a dangerous greenhouse gas that is detrimental to our health.

I think it is a very important resolution, and I hope that we adopt it, and I yield back.

The Chairman. Thank you. Does any other member seek recognition?

Mr. Stupak. Mr. Chairman.

The Chairman. Mr. Stupak.

Mr. Stupak. Thank you, Mr. Chairman. I share the concerns of my colleagues from Ohio and Wisconsin on obtaining information from the EPA and the administration. I don't believe the resolutions of inquiry being considered today are proper means to gain information when other options have not yet been exhausted. It is my understanding that the authors of these resolutions have not previously requested the documents from the White House or from the EPA. As chairman of the Subcommittee on Oversight and Investigations, I have no problem with gaining access to this information that has been brought to my attention.

Instead, my colleagues, the authors of these resolutions, are

mandating a compulsory disclosure of these documents without even making requests of the proper authorities to begin with. We are sort of putting the cart before the horse here, or the horse before the cart, whatever, we have got it screwed up. And as chairman of Oversight and Investigations, we work on these things. No one ever came to us. They asked for a hearing on the dealership. We are doing one Friday.

So when you asked for the information, we have been forthwith and we brought it there. Congress' power of subpoena to require documents through legislation should only be used as a last resort, not as a first resort. I believe voluntary requests for documents and information must first be exhausted before the committee should proceed down this path, and I also believe that we would be setting troubling precedent here today by approving these resolutions. When Mr. Barton was the chairman, and certainly under Chairman Waxman, they share our commitment to ensuring that members through the Subcommittee on Oversight and Investigation and even the full committee have all the information that we need, whether we are utilizing for congressional inquiries each time we came down to it when Mr. Barton was Chair and Mr. Waxman, when we needed subpoenas because someone refused information, you have always honored that. But these inquiries are just -- you are going a little bit too fast, let's go through the proper procedures.

So I would hope, that we would oppose these resolutions.

Subpoenas and resolutions of inquiry should be used as a last resort, not the first step. Let's reject these resolutions.

I yield back, Mr. Chairman.

The Chairman. The gentleman yields back his time. The gentlelady from Tennessee.

Mrs. Blackburn. Thank you, Mr. Chairman. I wanted to speak in support of H.R. 449 and that resolution. I think that it is vitally important that we ask the EPA simply to justify what their process is and what the science is behind their endangerment finding. I think this is -- as we move forward this is vital to the debate. We know that the EPA is going to decide how the agency is going to move forward to regulate CO2. And as my colleague from Georgia said, this is something that is essential, it is vital, we have to have it, plants have to have it. And we need to hear from them on this issue.

They are moving forward on the most expensive and expansive environmental regulations in history. And what we don't want them to do is to bypass the legislative process in their work. They are going to drive up energy costs, their productivity will fall, we are going to see jobs lost in this Nation, it is going to lower our GDP. So we need to hear from them and see if they are going to do anything that will have significant environmental benefits. And letting the bureaucrats at the EPA move forward on micromanaging the Nation's energy industry all in the name of combating global warming will have chilling effects on our

economy.

And quite frankly, I do not think it is too much to ask that they disclose to us their process and the science that they have used in this endangerment finding. Someone had mentioned that there were other options available to us in committee, and I will say, yes, indeed, there are. One of them is H.R. 391. It is the legislation that I have had floating around for about a year now that would preempt the ability of the EPA to regulate CO2 under the Clean Air Act. And for those that are looking for other options rather than the resolution before us today, I would encourage all members to sign on to 391.

But, Mr. Chairman, I do speak in support of the Resolution 449, and I encourage my colleagues to support that effort.

The Chairman. I thank the gentlelady for her explanation.

Mr. Barton.

Mr. Barton. I would like to engage the chairman in a colloquy as soon as he is finished with his other business.

The Chairman. Yes, Mr. Barton.

Mr. Barton. I hope you remember what your wife told you to bring home for supper tonight.

Mr. Chairman, on this issue I have listened to what you said, what Chairman Markey said, and what Chairman Stupak said, and I hope that you have listened to what I have said and some of the members on the Republican side. I think we are close to an agreement here, especially what Chairman Stupak said. If the

committee will --

The Chairman. Will the gentleman yield to me?

Mr. Barton. I would be happy to.

The Chairman. I have to leave to go take a phone call. It is a rather urgent one. You and I have had a conversation and you have expressed to me that this is part of our committee's jurisdiction. And this is an issue worth looking at in terms of our responsibility. And I want to commit to you that we will continue to monitor this issue and hold whatever hearings are necessary, whether it is in Mr. Markey's subcommittee or the Oversight Subcommittee. And on that basis I would hope that we wouldn't approve this resolution because all it does is try to tell us what to do and we are going to do it. We are going to do it with any other resolution as well.

Mr. Barton. If the chairman will yield.

The Chairman. Yes.

Mr. Barton. If we the chairman's assurances we have already I think handled the Chrysler issue because of what Chairman Stupak is doing, if you will also agree that in the reasonably near future we will hold either a hearing with Mr. Markey or Mr. Stupak on the endangerment finding to get some of the information that the notice of inquiry requires, I would recommend that we vote just to have no recommendation on this resolution.

The Chairman. I don't want to promise a hearing, but we want to look at this issue because it is a very important issue, and

whether we do it in a hearing or ask for it in documents or we send out inquiries or we have our own meetings, we are going to work together on that issue. We definitely have our differences on it, but it is in the purview of this committee and we will continue to monitor it.

Mr. Barton. Okay. Well, we reserve the right -- I mean, I may file a notice of inquiry, but based on -- I would just say we report both of these resolutions today with no recommendation.

The Chairman. I thank you very much for that spirit of comity. Let's proceed to a vote. First of all, on H.Res. 449 the motion before us is to report adversely this resolution to the full House.

Mr. Barton. Mr. Chairman, I would vote against adverse. I would vote for no recommendation. It has the same effect.

The Chairman. Is that right? I am informed that you are right. Those in favor of the motion to vote no recommendation on H.Res. 449 say aye. Opposed no. The ayes have it.

The motion now comes on reporting without recommendation H.Res. 462. All those in favor say aye. All those opposed say no. The ayes have it. The motion is agreed to. That concludes our business.

[Whereupon, at 2:15 p.m., the committee was adjourned.]