

Learning about Legislation #44 - Congress's Contempt Power

The Judiciary Committee's move of holding Attorney General Barr in contempt of Congress received wall-to-wall news coverage this week. But very little of that media blitz provided context about that contempt power. Enter the Congressional Research Service! In 2017, they produced a report titled "[Congress's Contempt Power and the Enforcement of Congressional Subpoenas: Law, History, Practice, and Procedure](#)." Frankly, this *entire report* should be required reading for any close observers of the current battles between the legislative and executive branches, and for all of our Democratic MoCs. Here are a few excerpts to whet your appetite.

From page 1, on **enforcing subpoenas**:

Congress has three formal methods by which it can combat non-compliance with a duly issued subpoena. Each of these methods invokes the authority of a separate branch of government. First, the long dormant inherent contempt power permits Congress to rely on its own constitutional authority to detain and imprison a contemnor until the individual complies with congressional demands. Because the contemnor is generally released once the terms of the subpoena are met, inherent contempt serves the purposes of encouraging compliance with a congressional directive. Second, the criminal contempt statute permits Congress to certify a contempt citation to the executive branch for the criminal prosecution of the contemnor. Criminal contempt serves as punishment for non-compliance with a congressional subpoena, but does not necessarily encourage subsequent acquiescence. Once convicted, the contemnor is not excused from criminal liability if he later chooses to comply with the subpoena. Finally, Congress may rely on the judicial branch to enforce a congressional subpoena.⁸ Under this procedure, Congress may seek a civil judgment from a federal court declaring that the individual in question is legally obligated to comply with the congressional subpoena. If the court finds that the party is legally obligated to comply, continued non-compliance may result in the party being held in contempt of court. Where the target of the subpoena is an executive branch official, civil enforcement may be the only practical means by which Congress can effectively ensure compliance with its own subpoena.

From page 53, on Practical Limitations of Congressional Reliance on Criminal Contempt or the Civil **Enforcement of Subpoenas**:

in many situations Congress likely will not be able to rely on the executive branch to effectively enforce subpoenas directed at executive branch officials, nor will reliance on the civil enforcement of subpoenas through the judicial branch always result in a prompt resolution of the dispute. Although subject to practical limitations, Congress retains the ability to exercise its own constitutionally based authority to enforce a subpoena through inherent contempt

From pages 10-11, on **Inherent Contempt**:

Under the inherent contempt power the individual is brought before the House or Senate by the Sergeant-at-Arms, tried at the bar of the body, and can be imprisoned or detained in the Capitol or perhaps elsewhere. The purpose of the imprisonment or other sanction may be either punitive or coercive. Thus, the witness can be imprisoned for a specified period of time as punishment, or for an indefinite period (but not, at least by the House, beyond the end of a session of the Congress) until he agrees to comply.

From page 30, on **civil enforcement** of subpoenas:

it appears that all that is legally required for House committees, the House general counsel, or a House-retained private counsel to seek civil enforcement of subpoenas or other orders is that authorization be granted by resolution of the full House. Absent such authorization, it appears that the courts will not entertain civil motions of any kind on behalf of Congress or its committees. While some may still argue that a measure passed by both houses and signed by the President conferring jurisdiction is required, it appears that—at least with respect to claims filed in the U.S District Court for the District of Columbia—if an authorizing resolution by the House can be obtained, there is a

likelihood that the court will find no legal impediment to seeking civil enforcement of subpoenas or other committee orders.

Before we make demands of our MoCs to take a particular path of action in this battle between the Article I and Article II branches of government, it is imperative that we know the manner in which they have been granted remedies for these interactions. Read up on it!