Thank you for joining today's
FIA Law and Compliance Division webinar.

We will begin momentarily.

Battlefield Washington: *Congressional Investigations Coming in the Next Congress*

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Futures Industry Association Law & Compliance Division Webinar
September 10, 2026

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Introduction

Congressional Oversight & Investigations Under Expected Democratic Control
- Who Will Congress Target?
- House and Senate Committee Leadership and Priorities

The Process of a Congressional Investigation
- Legal and Practical Considerations
- Tools Available to Congress
- Evolving Legal Trends

Risks for the Futures Industry
- Legal
- Reputational
- Legislative/Policy Outcomes

How to Prepare Now
- What Can Companies Do Now to Be Prepared?

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2026 Midterm Elections: Outlook, Issues, and Implications

- **House: Very likely to flip to Democratic control (Democrats need to net +3 for Majority)**
  - Historical precedent based on current GOP Administration
  - Democrats consistently outperforming Republicans on Generic Ballot polls and in prediction markets
- **Senate: More of a toss-up, at this stage (Democrats need 4 seats for Majority)**
  - Key Races: Alaska, Iowa, Maine, Michigan, Ohio, Texas (North Carolina, New Hampshire)
- **Key Issues: Trump Favorability, Affordability, AI/Data Centers**

Democrats would start 2027 with a mandate to investigate the Administration and the affordability crisis, while putting private sector interests at the focal point of these inquiries

2026 Midterm Elections: Committees to Watch

House

- Judiciary
- Oversight
- Financial Services
- Agriculture
- Energy & Commerce



Senate

- Banking
- Judiciary
- Finance
- Agriculture, Nutrition, and Forestry
- Energy & National Resources
- Homeland Security & Governmental Affairs / Permanent Subcommittee on Investigations

Plus "Congress Adjacent" Investigative Fronts

- Government Accountability Office (GAO)
- Agency Inspectors General (OIG)
- State Attorneys General

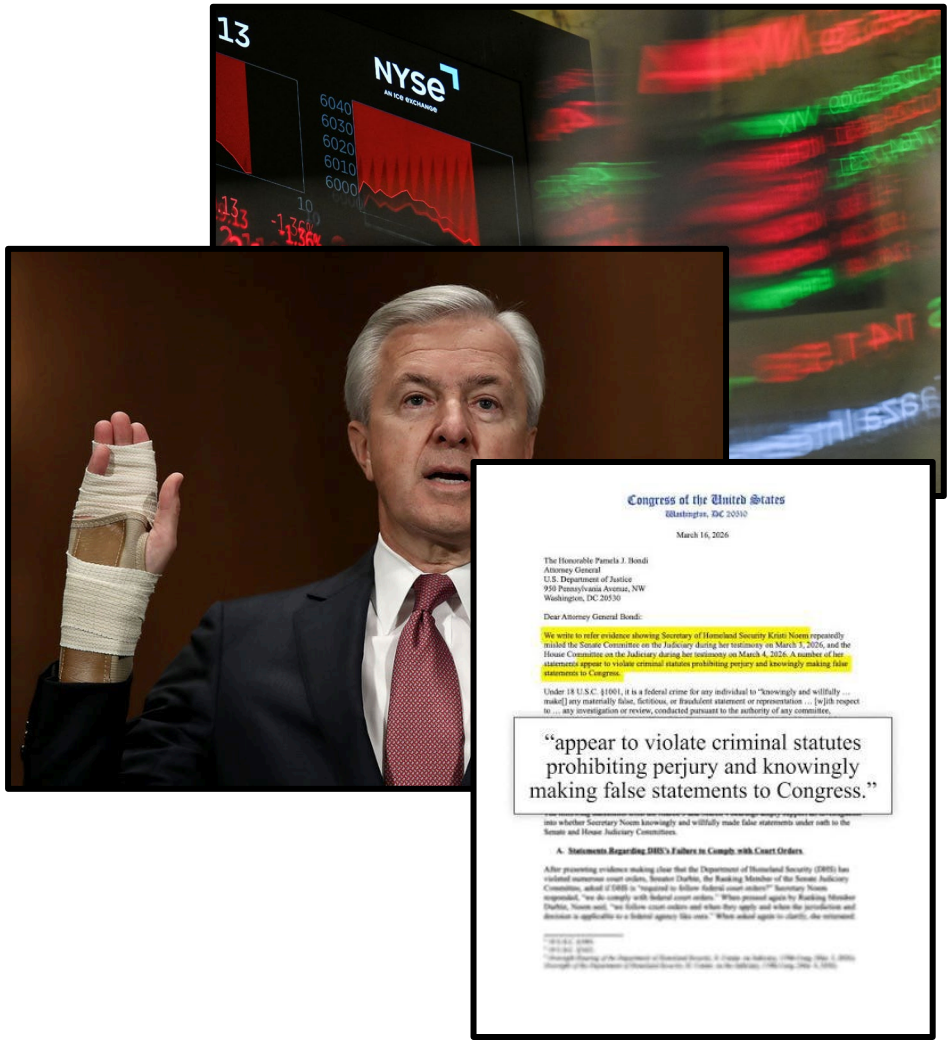
Who Will Congress Target?

- **Private Sector "Proxies" to the Administration**
  - Companies/industries receiving benefits aligned with White House priorities (*e.g.*, federal exemptions, tax credits) and those perceived to have benefitted from regulatory outcomes
  - Backers/donors and business partners
  - Contractors
  - Former government officials and related private businesses
  - "Reluctant victims"
- **Industry Targets**
  - Financial Services (*e.g.*, prediction markets)
  - Technology/AI (*e.g.*, social media, data centers)
  - Energy Sector (*e.g.*, pricing, environmental impact)
  - Affordability Proxies (*e.g.*, consumer goods, surveillance pricing)



What Are the Legal and Other Risks For Companies Facing an Investigation?

- **A Congressional investigation poses multiple risks to a private sector entity:**
  1. *Direct Legal Risks*
     - Related to *how* you respond to the investigation
     - Includes inaccurate information provided to Congress (*e.g.*, false statements/perjury) and obstruction charges (*e.g.,* related to document retention and production)
  2. *Indirect Legal Risks*
     - The factual record developed and released by Congress can become available to other government authorities and private litigants
  3. *Reputational Risks*
  4. *Business Risks*
     - Impact on pending government engagements/approvals
     - Impact on sales performance/consumer attitudes
     - Impact on market performance for publicly traded company may embolden activist shareholders



What Are the Specific Risks For the Futures Industry Now?

- **Perceived connections between prediction market activity and Executive action makes the industry vulnerable to investigative scrutiny**
- **Overlap with other congressional oversight (CFTC enforcement, crypto regulation) only increases the likelihood of upcoming inquiries**
- **Expect investigations to draw a nexus to affordability in areas like energy costs**



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What Are the Specific Risks For the Futures Industry Now?

- **Expect some Democrat-led investigations to be coordinated with or prompted by advocacy groups**
- **Certain vulnerabilities may be outside of your control:**
  - Perceived sector-wide ties between the Industry and the White House
  - Equity stakes and/or trading activity by Executive Branch stakeholders
  - Potential cyber incidents

Trump made more than $1bn from crypto in first year back in office

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1 July 2026

Kali Hays, Technology reporter and Peter Hoskins, Business reporter

Kalshi suspends GOP House candidate for betting on her own race

Laurie Buckhout of North Carolina said she "bet on myself. Literally."

August 31, 2026

Nearly a Million Investors Lost a Total of $3.8 Billion on Trump Crypto Coin

A report from a cryptocurrency analytics firm details how those who bought the Trump memecoin have fared, with most retail investors having lost money while sophisticated traders did better.



Protesters outside Trump National Golf Club in Sterling, Va., ahead of a private dinner for investors in President Donald Trump's cryptocurrency tokens last May. Elizabeth Frantz for The New York Times

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How Does Congress Initiate an Inquiry?

Committees have various options to initiate investigations

- An inquiry may begin with a letter to the Executive Branch before a committee contacts related private parties
- Expect a congressional investigation to move much quicker than other government inquiries

Different investigations follow different approaches

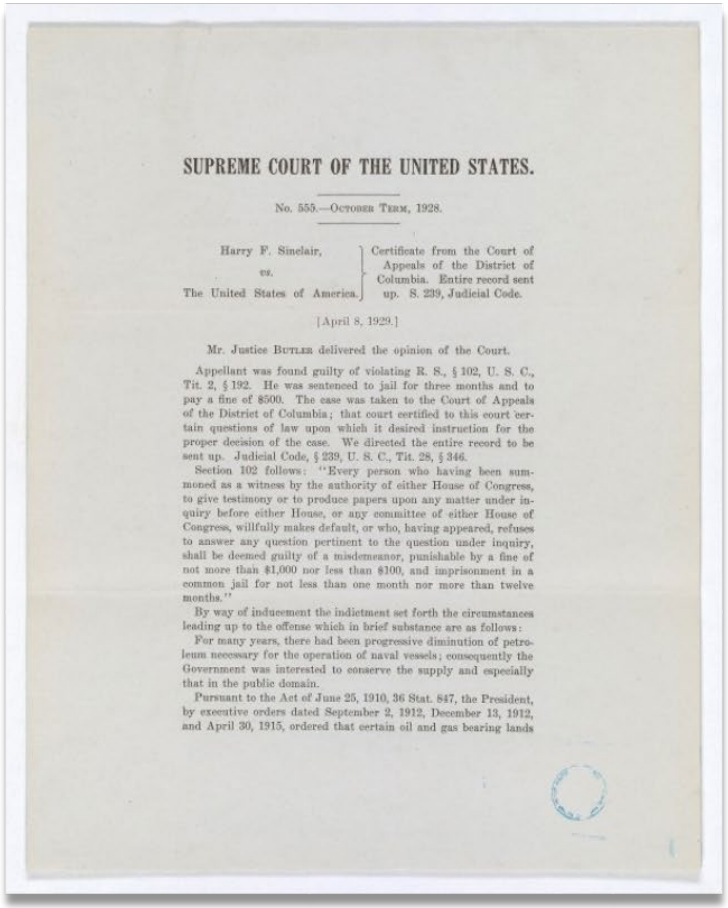
- Some committees and investigations follow a headline-driven trajectory, with initial press reports quickly evolving to a congressional letter and ultimately a hearing
- Under certain circumstances, both the House and Senate pursue lengthier, more fact-intensive investigations

Though no two investigations are the same, there are similarities

- Initial requests generally lead to discovery, through both document production and potentially interviews or depositions
- Many inquiries conclude with a final hearing and/or report

Congressional Investigative Authority & the Private Sector

- **Congress cannot "expose for the sake of exposure"**
  - *Watkins v. United States*, 354 U.S. 178 (1957)
- **Notwithstanding, courts have recognized Congress' broad—but not unlimited—authority to investigate**
  - Congress may investigate any issue on which it may legislate
    - The Supreme Court in 1927: "We are of opinion that the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function." *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927)
  - Congressional oversight serves as a check on the Executive Branch, and these inquiries often sweep in private parties
  - But committees may also scrutinize the private sector completely independent of Executive Branch oversight
  - Congress maintains authority to investigate even where another entity (or agency) has already investigated the matter. *See Sinclair v. United States*, 279 U.S. 263 (1929)



SUPREME COURT OF THE UNITED STATES.

No. 555.—October Term, 1928.

Harry F. Sinclair, vs. The United States of America. } Certificate from the Court of Appeals of the District of Columbia. Entire record sent up. S. 239, Judicial Code.

[April 8, 1929.]

Mr. Justice Butler delivered the opinion of the Court.

Appellant was found guilty of violating R. S., § 102, U. S. C., Tit. 2, § 192. He was sentenced to jail for three months and to pay a fine of $500. The case was taken to the Court of Appeals of the District of Columbia; that court certified to this court certain questions of law upon which it desired instruction for the proper decision of the case. We directed the entire record to be sent up. Judicial Code, § 239, U. S. C., Tit. 28, § 346.

Section 102 follows: "Every person who having been summoned as a witness by the authority of either House of Congress, to give testimony or to produce papers upon any matter under inquiry before either House, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100, and imprisonment in a common jail for not less than one month nor more than twelve months."

By way of inducement the indictment set forth the circumstances leading up to the offense which in brief substance are as follows:

For many years, there had been progressive diminution of petroleum necessary for the operation of naval vessels; consequently the Government was interested to conserve the supply and especially that in the public domain.

Pursuant to the Act of June 25, 1910, 36 Stat. 847, the President, by executive orders dated September 2, 1912, December 13, 1912, and April 30, 1915, ordered that certain oil and gas bearing lands

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Congressional Investigative Authority & the Private Sector

- **Certain procedural and constitutional limits do apply**
  - Witnesses retain their constitutional rights (including, *e.g.*, protections afforded by the First and Fifth Amendments), but note recent efforts to pursue criminal contempt following a Fifth Amendment assertion
  - Individual committees are also constrained by their jurisdiction, as well as the procedural rules they adopt



SQUAWK ON THE STREET

Shkreli pleads the Fifth



The Committee on Oversight and Government Reform is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. To arrange for delivery of documents or to ask any related follow-up questions, please contact the Committee on Oversight and Government Reform Majority staff at (202) 225-5074. Thank you for your attention to this important matter.

Sincerely,

James Comer

James Comer
Chairman
Committee on Oversight and Government Reform

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Congressional Investigative Authority & the Private Sector

- **Although investigations must have a "legislative purpose," actual legislation need not result**
  - "To be a valid legislative inquiry there need be no predictable end result." *Eastland v. United States Servicemen's Fund*, 421 U.S. 491, 509 (1975)
  - Consequently, certain specially-constituted committees can be formed without express legislative authority, and investigations may be driven by political—over legislative—objectives
  - Congress is not a law enforcement agency and cannot seek records for purely law enforcement purposes. *See, e.g., Senate Select Committee v. Nixon,* 498 F.2d 725 (D.C. Cir. 1974)
  - But Congress *can* develop a factual record that is later used by law enforcement



How Can Congress Pursue Cooperation from a Private Party?

- **Subpoena power is a key consideration**
  - For most House Committees, the chairman alone may issue a subpoena
  - Watch for the Senate to follow this trend
- **Most inquiries do not start with subpoenas**
  - Less formal request letters are far more common, but may accompany the implicit threat of a subpoena
  - Committees may request a briefing before sending a letter, which can present its own risks
- **Many committees increasingly leverage witness interviews and depositions**
  - It is unlawful to make material misrepresentations to a congressional committee even outside the context of sworn testimony
  - Videos of depositions and transcribed interviews may be recorded and later released
- **Committees will seek to leverage reputational risk in pursuing cooperation**

Can a Company Refuse to Comply with a Congressional Subpoena?

- **Both chambers of Congress in recent years have held private individuals and/or entities in contempt for failing to comply with a subpoena**

- **Three types of contempt of Congress:**
  - Inherent contempt: Not utilized since the 1930s
  - Criminal contempt: Punishes a recalcitrant party
  - Statutory civil contempt: Seeks to force a party to comply
    - *Note: O*nly the Senate has explicit statutory authority to pursue civil enforcement, *see* 28 U.S.C. § 1365, though we have seen recent attempts by the House to exercise civil enforcement

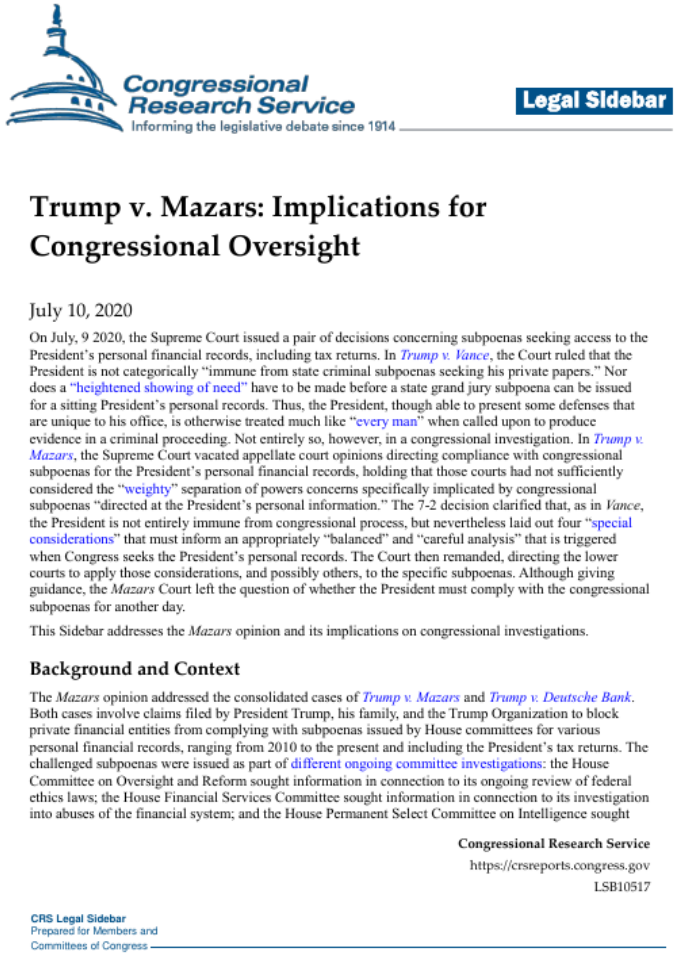


Can a Company Refuse to Comply with a Congressional Subpoena?

- **Subpoena recipients have limited options to legally challenge or quash a congressional subpoena…though there have been a number of recent attempts to do so**
  - *See Senate Permanent Subcomm. on Investigations v. Ferrer*, 856 F.3d 1080 (D.C. Cir. 2017)
  - *See De la Torre v. Cassidy*, No. 25-5353 (D.C. Cir. July 31, 2026)

- **Parties failing to comply with a congressional subpoena face substantial legal *and reputational* risks**
  - Historically, this reality has incentivized cooperation, even in the face of parallel legal battles
  - The current political and legal environment has fostered a growing appetite to push back

Enforcement of Congressional Investigations



Congressional Research Service
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Legal Sidebar

Trump v. Mazars: Implications for Congressional Oversight

July 10, 2020

On July, 9 2020, the Supreme Court issued a pair of decisions concerning subpoenas seeking access to the President's personal financial records, including tax returns. In *Trump v. Vance*, the Court ruled that the President is not categorically "immune from state criminal subpoenas seeking his private papers." Nor does a "heightened showing of need" have to be made before a state grand jury subpoena can be issued for a sitting President's personal records. Thus, the President, though able to present some defenses that are unique to his office, is otherwise treated much like "every man" when called upon to produce evidence in a criminal proceeding. Not entirely so, however, in a congressional investigation. In *Trump v. Mazars*, the Supreme Court vacated appellate court opinions directing compliance with congressional subpoenas for the President's personal financial records, holding that those courts had not sufficiently considered the "weighty" separation of powers concerns specifically implicated by congressional subpoenas "directed at the President's personal information." The 7-2 decision clarified that, as in *Vance*, the President is not entirely immune from congressional process, but nevertheless laid out four "special considerations" that must inform an appropriately "balanced" and "careful analysis" that is triggered when Congress seeks the President's personal records. The Court then remanded, directing the lower courts to apply those considerations, and possibly others, to the specific subpoenas. Although giving guidance, the *Mazars* Court left the question of whether the President must comply with the congressional subpoenas for another day.

This Sidebar addresses the *Mazars* opinion and its implications on congressional investigations.

Background and Context

The *Mazars* opinion addressed the consolidated cases of *Trump v. Mazars* and *Trump v. Deutsche Bank*. Both cases involve claims filed by President Trump, his family, and the Trump Organization to block private financial entities from complying with subpoenas issued by House committees for various personal financial records, ranging from 2010 to the present and including the President's tax returns. The challenged subpoenas were issued as part of different ongoing committee investigations: the House Committee on Oversight and Reform sought information in connection to its ongoing review of federal ethics laws; the House Financial Services Committee sought information in connection to its investigation into abuses of the financial system; and the House Permanent Select Committee on Intelligence sought

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Prepared for Members and
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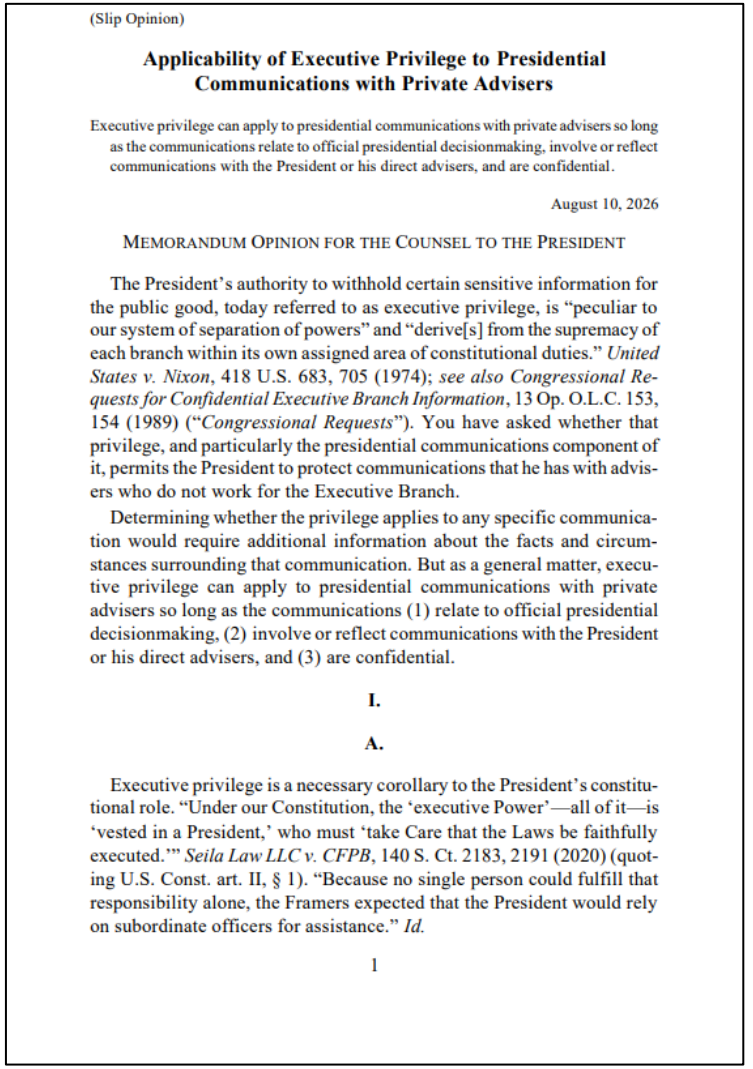
- **Recent court decisions have addressed the limits of congressional authority to conduct investigations and Congress' ability to enforce its subpoenas**
  - While these cases relate to a subpoena requesting the president's personal information (*Trump v. Mazars*) and enforcement of subpoenas against executive branch employees (*Committee on the Judiciary v. McGahn*), they may affect how Congress seeks information and how committees conduct investigations
  - Given the context of these cases, it is not yet settled how they will apply in investigations of private entities
  - But one sentence in *Mazars* should be noted: " . . . recipients [of congressional subpoenas] have long been understood to retain common law and constitutional privileges with respect to certain materials, such as attorney-client communications . . . ." *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2032 (2020) (*citing Watkins v. United States*, 77 S. Ct. 1173, 1179 (1957))

Can an Executive Branch Agency Block a Congressional Investigation?

- **We anticipate aggressive defensive strategies from the Administration, including but not limited to affirmative litigation to slow or prevent document production and witness testimony to Congress**

- **Recent court decisions, including *Trump v. Mazars,* have addressed the limits of congressional authority to conduct investigations and Congress' ability to enforce its subpoenas**
  - *See, e.g.*, *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019 (2020)

- **Affirmative attempts by the Executive Branch to block companies from complying with congressional inquiries will likely face extensive legal challenges, leaving private sector targets in a precarious legal position**



(Slip Opinion)

Applicability of Executive Privilege to Presidential Communications with Private Advisers

Executive privilege can apply to presidential communications with private advisers so long as the communications relate to official presidential decisionmaking, involve or reflect communications with the President or his direct advisers, and are confidential.

August 10, 2026

MEMORANDUM OPINION FOR THE COUNSEL TO THE PRESIDENT

The President's authority to withhold certain sensitive information for the public good, today referred to as executive privilege, is "peculiar to our system of separation of powers" and "derive[s] from the supremacy of each branch within its own assigned area of constitutional duties." *United States v. Nixon*, 418 U.S. 683, 705 (1974); *see also Congressional Requests for Confidential Executive Branch Information*, 13 Op. O.L.C. 153, 154 (1989) ("*Congressional Requests*"). You have asked whether that privilege, and particularly the presidential communications component of it, permits the President to protect communications that he has with advisers who do not work for the Executive Branch.

Determining whether the privilege applies to any specific communication would require additional information about the facts and circumstances surrounding that communication. But as a general matter, executive privilege can apply to presidential communications with private advisers so long as the communications (1) relate to official presidential decisionmaking, (2) involve or reflect communications with the President or his direct advisers, and (3) are confidential.

I.

A.

Executive privilege is a necessary corollary to the President's constitutional role. "Under our Constitution, the 'executive Power'—all of it—is 'vested in a President,' who must 'take Care that the Laws be faithfully executed.'" *Seila Law LLC v. CFPB*, 140 S. Ct. 2183, 2191 (2020) (quoting U.S. Const. art. II, § 1). "Because no single person could fulfill that responsibility alone, the Framers expected that the President would rely on subordinate officers for assistance." *Id.*

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A Congressional Inquiry is Neither Litigation nor a Lobbying Exercise

- **One key difference is the less certain application of the attorney-client/work product privileges**
  - Both the House and Senate have taken the position that common law privileges do not apply
  - In practice, these privileges are often respected, but challenges can raise existential questions for sophisticated targets
- **Unlike in litigation, there are no broadly-applicable rules of evidence or procedure**
- **Congress is not bound to protect confidential information, and is generally immune from liability for legislative acts (including, *e.g.,* many public disclosures)**
- **In a hearing, there are few limitations on scope and substance**
  - Questioning is limited in time but not in substance, with limited exceptions (*e.g.*, classified information)
  - Witnesses are often prompted to provide "sound bite" responses, even on off-topic questions
  - Witnesses may have counsel present, but they have a limited role

A Congressional Inquiry is Neither Litigation nor a Lobbying Exercise



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How Can Companies Begin to Prepare?

Understand the facts and the law, and develop a strategy that anticipates how a congressional inquiry could impact parallel proceedings

- Advanced preparation is the most effective defense tactic

Consider when and whether to take other advanced actions (*e.g.*, remediation)

- These should be carefully considered relative to risks, and may not stop an investigation

Align stakeholders on a consistent strategy and messaging

- Ensure consistency among all legal, government relations, and public-facing statements

Concrete Steps to Prepare



1. **Conduct Proactive Threat Assessments**

- Variable levels of depth, including targeted email collection & review
- Identify key witnesses and conduct fact-gathering interviews



2. **Develop a Response Plan**

- Identify representatives from key departments
- Determine internal communications and approval protocols
- Factor in how investigations could impact existing GR strategy
- Run tabletop exercises



3. **Practice Good Email Hygiene and Consistent Messaging**

- Ensure consistency between what you say publicly and what your records show
- Disciplined document practices (including retention) now reduce long term risk



4. **Integrate Counsel Early**

- Importance of coordinating global legal strategies
- Privilege implications for Congress and beyond



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