

Cos. Should Inventory Issues To Prep For New Congress

By **Alyssa DaCunha, Joel Green and Kelley Kling** (November 15, 2024)

As the dust settles on the 2024 election, the legislative and oversight agendas of the 119th Congress are coming into sharper focus, and companies are evaluating the challenges and opportunities that lie ahead.

While changes in presidential administrations always usher in a period of transition, the new Congress will also be marked by significant leadership changes and a governance mandate unlike those in recent memory.

As companies prepare for congressional oversight next year and beyond, evaluating and mitigating potential risks, including through an issues inventory, can help corporate counsel begin to prepare, even as much uncertainty remains.

A unified Republican executive and legislative branch will have a number of implications for companies and their counsel. Oversight of the administration by the legislative branch will decrease dramatically, and so we can expect additional oversight focus on the private sector.

While the bureaucratic elements of the individual agencies are likely to receive scrutiny, this will be a much smaller portion of the oversight portfolio, and will be less of a priority than scrutiny of the prior administration and the private sector, which will be informed by the priorities and areas of focus of President-elect Donald Trump, discussed in greater detail below.

Unified Republican control will place pressure on Republicans, especially within the first 100 days of the Trump administration, to advance legislation and confirm nominees.

At the same time as this flurry of legislative and nominations activity, however, the well-sourced oversight staff of every congressional committee will quickly organize and formulate their oversight agendas for the 119th Congress.

And changes in the White House are not the only source of uncertainty. Even before the election results were known, the congressional investigations bar was preparing for a season of transition, as several key congressional leaders are stepping down from committee leadership positions, ushering in a new class of committee chairs and staff members.

In the U.S. House of Representatives, retirements or term limits will open up Republican chairmanships on the Financial Services Committee, and the Energy and Commerce Committee — two coveted roles — as well as on the Foreign Affairs Committee, Transportation and Infrastructure Committee, and the Committee on Education and the Workforce.



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Significantly, in the U.S. Senate, Republicans have elected a new leader, Sen. John Thune, R-S.D., following the decision by Minority Leader Mitch McConnell, R-Ky., to end his 18-year tenure as GOP leader, and we expect potentially several key departures from the Senate into the administration.

Senate Democrats will see more limited changes in leaderships, with the campaign loss of Sen. Sherrod Brown, D-Ohio, creating an opening for a new ranking member on the Senate Banking, Housing and Urban Affairs Committee, for which Brown was chair, and the retirement of Sen. Ben Cardin, D-Md., doing the same on the Foreign Relations Committee.

Leadership changes also have implications for the broader committee staffing: While members set the investigative agenda and tone, senior congressional staff take the lead on the day-to-day operations of investigations, including decisions on investigatory scope, document production requests and the focus of lines of questioning.

New committee leaders will bring their own senior staff and expand their investigative roster, which may create more uncertainty about the direction and focus companies can expect from a congressional committee.

We can, however, assume that some investigative priorities of the committees will closely track the issues that garnered the most attention on the campaign trail, as committees will use oversight to frame issues in a way that will advance the policy objectives of the incoming administration and Republican congressional majorities.

In the lead-up to the election, the Trump campaign promoted policies related to reducing corporate taxes, robust enforcement of the immigration laws, scrutiny of higher education, rolling back environmental regulations and expanding permitting approvals, healthcare reform, and addressing various social issues.

We expect that China, and companies that do business with a China nexus, will continue to be subject to robust oversight, perhaps on a bipartisan basis.

And of course, given the president-elect's sweeping victory and the unopposed leadership of the Republican party, we expect that Trump will heavily influence the oversight agenda.

In addition to these topics, headline events can be expected to spur congressional investigations and requests for information. Whether a data breach, allegation of misconduct, environmental disaster or some other type of newsworthy event, committees can be counted on to call for hearings that are top of mind for the American public.

Because congressional investigations can be expansive and more nebulous than investigations conducted by enforcement-oriented agencies, corporate counsel may wish to inventory its potential issues to assess and plan for potential risks. Such an issues inventory may look at:

- Whether upcoming business events — including mergers or acquisitions, corporate restructuring, divestments, stock buybacks, or entry into new markets — might invite regulatory or congressional scrutiny;
- A company's touchpoints with a government program, particularly if the company receives funding, as these touchpoints may receive scrutiny if the federal program or agency in question becomes an investigative target;

- Any ways in which the company has benefited from Biden-era policies and regulations;
- The impact of tax policies on the company's financials;
- Any supply-chain integrity issues or touchpoints with countries viewed as unfriendly or competitive, which are likely to receive greater scrutiny under the incoming administration;
- How a company uses noncitizen labor, and the potential implications of changes in visa processing or status;
- An enterprise's diversity, equity and inclusion program;
- Upcoming areas of policy focus, like healthcare reform affecting insurers or education policy affecting third-party service providers, that intersect with the company's business; and
- The potential for unlikely — but high-impact — events, like natural or human-caused disasters, cyber breaches, or manufacturing recalls, that could affect the company's operations.

Ideally, in addition to legal counsel, any such inventory should be formulated in tandem with a company's corporate affairs and government affairs teams.

After identifying potential risks and issues, organizations and their counsel can evaluate whether proactive engagement would mitigate potential risk and defuse or narrow a potential investigation. Organizations may choose to:

- Assess the company's relationships with its home state delegation and key policymakers;
- Build relationships and cultivate an improved understanding of the information or engagement that committee and subcommittee leaders would find most helpful in the stages preceding a full investigation;
- Consider conducting proactive outreach to key members prior to the start of an official inquiry;
- Create a cross-functional rapid response team responsible for ensuring seamless information sharing and efficient decision-making in quickly unfolding situations;
- Develop an immediate governance, communications and procedural road map to ensure that the steps an organization takes in the first 24 or 48 hours of a crisis are the right ones.

As in years past, the most aggressive and attention-grabbing tools available to committee leaders in both chambers are their respective abilities to call for hearings, conduct investigations, and issue subpoenas to organizations or persons of interest.

In these more rapid-response situations, it is crucial that companies engage in crisis response strategic planning efforts to ensure that effective management of congressional outreach is handled in parallel with necessary communication development, internal reviews and any required remedial actions.

While areas of congressional focus will only become clearer in 2025, the current jockeying of priorities should cue organizations to prepare for an aggressive congressional oversight posture over the next two years by doing the work to plan ahead now.

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