Introduction

Gibson, Dunn & Crutcher is pleased to offer its services to help clients navigate through any congressional investigation that arises. Gibson Dunn can provide clients with insight into the congressional investigations process, understanding of how particular congressional investigative committees and subcommittees operate, familiarity with key investigative members and staff, and the highest quality legal analysis and written product.

Congressional investigations and oversight present a number of unique challenges not found in the more familiar arenas of civil litigation and Executive Branch investigations. As a result, an effective approach requires a developed skill set and intuitive sense of how congressional investigations unfold. Similarly, congressional investigations generally involve issues and agendas far outside the comfort zone and experience of most litigators.

Congressional investigations often involve public attacks on a company’s reputation, which can imperil the goodwill upon which the company has built its business and maintains its competitive advantages. Rather than in the relatively controlled environment of a courtroom, congressional investigations often unfold in a hearing room in front of television cameras and on the front pages of major newspapers. Handled inartfully, the results of these investigations can be devastating—but they do not need to be.

Gibson Dunn has substantial expertise in handling congressional investigations, and it has regular and on-going interaction with Congress and its various investigative committees. Gibson Dunn has handled dozens of major congressional investigations for clients of all sizes. These investigations have included those initiated in both chambers of Congress, by all major investigative committees, and by special investigative entities. Moreover, our attorneys have deep experience defending Executive Branch investigations that result from congressional inquiries. From the outset, we work with the client to assess the issues from a strategic perspective so that we can move forward to effectively handle every aspect of an investigation, including responding to a committee subpoena, negotiating the terms of a document production, preparing for interviews, depositions, or hearings, managing the public relations responses, and anticipating and neutralizing collateral consequences.

Gibson Dunn offers a combination of experience and talent that is unique among the small cadre of law firms that are regularly involved in the defense of congressional investigations. This
experience adds to its overall efficiency, both in ramping up for a new investigation and managing it to completion.

**Gibson Dunn's Broad Experience with Congressional Investigations from Both Sides of the Dais**

Gibson Dunn is well-positioned to assist clients in congressional investigations for two primary reasons—our knowledge and understanding of congressional investigations and our knowledge and understanding of the committees, members and staff that conduct them.

Gibson Dunn lawyers have worked on or with or defended clients before all of the relevant committees. We also have worked closely with many of the chairmen and ranking members, as well as their staffs. These relationships open lines of communication with the Committees and enable our lawyers to anticipate the members’ next moves.

Congressional investigations are rarely net positive events for target companies, but we believe that an important part of the preparations for an investigative hearing, in particular, is preparing a positive message, and one likely to be well-received. Hence, our work with clients facing congressional investigations is not solely defensive. We also work with clients to develop a positive message, as well as to divert committee attention away from our clients and toward other targets. Finally, we look for ways to apply pressure to committees to dissuade them from pursuing investigations of our clients, and we have found creative, effective ways to achieve that end. Among the methods we have employed are triggering Government Accountability Office (GAO) investigations, investigations by other committees and pressure from other members of Congress.

To provide a better sense of our experience defending clients in congressional investigations, below is a list of some of our recent engagements:

- Representation of a Big 4 accounting firm in an investigation by the Senate Permanent Subcommittee on Investigations into alleged offshore tax evasion. This investigation culminated in a hearing at which our client successfully defended its actions, resulting in no follow-up by the Subcommittee and avoiding negative press coverage and reputational damage.

- Representation of two career colleges being investigated by the Senate Health, Education, Labor & Pensions Committee as well as by the GAO. This investigation also involves related civil litigation as well as a separate congressional investigation that has looked into the GAO inquiry.

- Representation of a telecommunications company in multiple congressional investigations relating to the company’s interactions with the Federal Communications Commission.

- Representation of a major multinational company under
investigation by the House Energy & Commerce Committee for alleged abusive labor practices.

- Representation of a major health insurer before the House Energy and Commerce, House Oversight and Government Reform, and Senate Commerce Committees investigating practices within the health insurance industry. This multi-front defense of a series of high-profile investigations required careful coordination of the information and documents provided to different congressional committees.

- Representation of a major financial services company before the Senate Permanent Subcommittee on Investigations regarding causes of the financial markets crisis. This investigation included a hearing at which seven witnesses from the company testified over a 10-hour period.

- Representation of a company that holds construction contracts in several war zones in connection with investigation by Commission on Wartime Contracting in Iraq and Afghanistan regarding Afghanistan reconstruction contracts.

- Representation of a company that provides senior living services before the Senate Special Committee on Aging.

- Representation of a major healthcare information technology firm before the Senate Finance Committee.

- Representation in connection with the House Science and Technology Committee’s investigation of satellite procurement issues and follow-on investigation by the NASA Office of Inspector General.

- Representation of an investigative services company before the Senate Finance Committee.

- Representation of major financial services companies before the Financial Crisis Inquiry Commission investigating the causes of the financial markets crisis.

- Representation of a leading global provider of broadband and satellite services undergoing investigation by nine different congressional committees and the Department of Justice.

- Representation of a leading defense contractor being investigated by two different congressional committees regarding export control practices.

- Representation of a market leader in the entertainment industry subject to investigations by the Senate and House Judiciary Committees relating to antitrust issues.

- Representation of the CEO of a large cable company under consideration to be the U.S. Ambassador to a major European country during an investigation into his background by the Senate Foreign Relations Committee.

- Representation of a company that holds protective services contracts in Iraq during investigation by Commission on Wartime Contracting in Iraq and Afghanistan regarding services contracts.
Representation of multiple Members of Congress, individuals, and entities undergoing investigation by the House Committee on Standards of Official Conduct and Office of Congressional Ethics.

The Gibson Dunn Advantage

Following is a discussion of the philosophy that guides our representation of clients in congressional investigations and, we believe, makes our representations particularly effective.

Effective representation in the face of a congressional investigation requires a blend of experience and capabilities that, while often touted, is hard to find. This blend of experience and skill is what constitutes the Gibson Dunn advantage:

- **An Insider's Perspective on What Motivates and Influences Congressional Investigations.** Gibson Dunn lawyers have not only defended against numerous high-profile congressional investigations, but they also have conducted them. Our lawyers have held top positions on key congressional committees in both the House and Senate, and have held leadership roles on numerous high stakes special investigations. While serving in Congress, attorneys who are now part of the Gibson Dunn team have deposed and interviewed hundreds of witnesses, developed and executed dozens of investigative and media strategies, conducted numerous hearings, and written a variety of staff and committee reports. From this experience as well as our experience in representing clients in these investigations, Gibson Dunn offers a unique knowledge of and perspective on the inner workings of various investigative committees, including their motivations and how best to make inroads with them.

- **A Keen Understanding of How a Congressional Committee Is Likely to React to a Target's Responses.** You have received a letter from a congressional committee requesting a production of documents and information that will take hundreds of hours to complete. How do you decide whether to embark upon an expensive and time-consuming production? What is likely to happen if you do not comply? Can you negotiate with the committee and, if so, should you assume an adversarial or cooperative posture? Answering these questions in ways that protect your reputation and interests as well as your resources depends on an understanding of several key factors. You need to understand the nature of the committee involved. Is the request part of a full-scale investigation or is it part of an oversight matter that is likely to wither over time? You also need to understand the tools that the committee has available to enforce its request, and whether it is likely to employ those tools. The answer to these questions often depends as much on the practices and proclivities of the committee chairman and ranking member as it does on the committee’s rules of procedure. You must have an appreciation of all of these elements to develop a strategy that will be effective in each
particular circumstance. Gibson Dunn lawyers know the key members and know the rules and motivations of the committees that conduct serious investigations, and we can develop effective strategies drawing on that knowledge and experience. If failure to respond to a burdensome letter request is likely to result in a subpoena, a course of action may be warranted that would not have been if the request is unlikely to be backed up by coercive congressional action. These are questions that pose risks too great to leave to speculation or chance. We know how a committee or Member of Congress is likely to react to a particular defense tactic, in part, because in the past, Gibson Dunn lawyers have been the ones reacting on behalf of Congress.

- **Experience Defending the Interests of Companies and Individuals Against the Unique Perils of a Congressional Investigation.** Experience in a litigation-based context is helpful in terms of understanding the effects that a congressional investigation might have on a client, but it is not enough. Gibson Dunn understands how the negative publicity that accompanies a congressional investigation can affect a client, sometimes dramatically, and we understand the best ways to try to prevent potentially catastrophic results. High-profile hearings can pose great risks to a client, but so can a staff report or the selective leakage of damaging e-mails or other documents that, by themselves, can appear to show a client’s actions in a negative light. Knowing what to avoid—and what may result from an investigation and how it could affect a client—is a critical part of a sound defense strategy. Gibson Dunn has devised effective defense strategies in numerous congressional investigations and stands ready to do so for you.

- **Appreciation of the Differences Between Litigation and Executive Branch Investigations and Congressional Inquiries.** You have received a burdensome document request from a congressional committee and have prepared a response. You withhold documents protected by the attorney-client privilege, and now the committee is demanding that you produce those documents. What do you do? Often, a strategy based upon tactics that are effective in a litigation or Executive Branch investigative context is ineffective—or can even backfire—in a congressional investigation. Knowing that Congress takes the position that the attorney-client and other privileges do not apply to its requests for documents or information is, of course, essential. But so is an appreciation for the practices of the particular committee, and an understanding of the consequences of refusing to comply with its demand for privileged documents. Similarly, an understanding of the reaction that hardball tactics are likely to elicit (for example, might the committee send a message by scheduling the deposition of your CEO?) is crucial to avoiding unexpected and unwelcome results. Gibson Dunn has extensive knowledge of committee procedures, authorities, and tactics, and experience with the reactions that defense
tactics are likely to elicit.

- **Experience Preparing Top Executives.** Congressional committees often focus their attention on the CEO or other top executives of a company under investigation, whether or not the top executives know the most or even much about the issues at hand. Gibson Dunn is experienced at preparing top officials to testify at a congressional hearing or deposition, or to participate in an interview by committee staff. It is important for your CEO or other executive to have a full appreciation for how a hearing, deposition, or interview will be conducted, what is likely to be asked, who is likely to ask it, how the committee, the media, and the public are likely to respond to certain answers, how it will differ from Executive Branch testimony, and what protections are available. Our methods, which include training and practice sessions and mock hearings, depositions, and interviews, have helped top executives weather high-stakes, contentious investigations.

- **Experience Neutralizing Collateral Consequences.** Congressional investigations often result not only in reputational damage, but in referrals that lead to or fuel Executive Branch investigations. When faced with a congressional investigation, clients need a law firm that knows not only how to defend against the direct consequences of the inquiry, but also against the collateral effects, such as a referral to another investigative body. Effective representation pairs skilled congressional investigations practitioners with skilled civil and white collar litigators. Both perspectives are needed, for example, when balancing the benefits of a joint defense agreement in a congressional investigation against the risk that it will not be recognized in subsequent litigation. Gibson Dunn practices a teaming approach that combines these skills and experiences at the highest levels, so that the successful defense of the direct effects of a congressional investigation works seamlessly with the defense of possible collateral consequences.