Congressional Investigations: Roadmap for the 120th Congress



November 12, 2026

GIBSON DUNN

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- Approved for 1.0 hour General PP credit.
- CLE credit form must be submitted by **Thursday, November 19th**.
- Form Link: https://gibsondunn.qualtrics.com/jfe/form/SV_cu0wjywMtUV3LBY
  - Most participants should anticipate receiving their certificate of attendance in four to eight weeks following the webcast.

- **Please direct all questions regarding MCLE to CLE@gibsondunn.com.**

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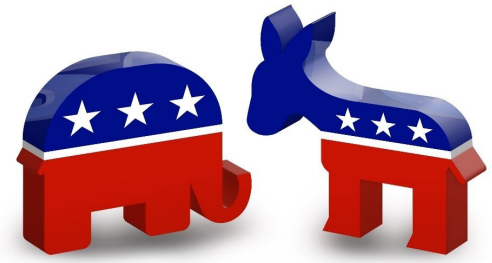
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Electoral Outcomes and Implications

120th Congress

Democrats Sweep the House and Senate

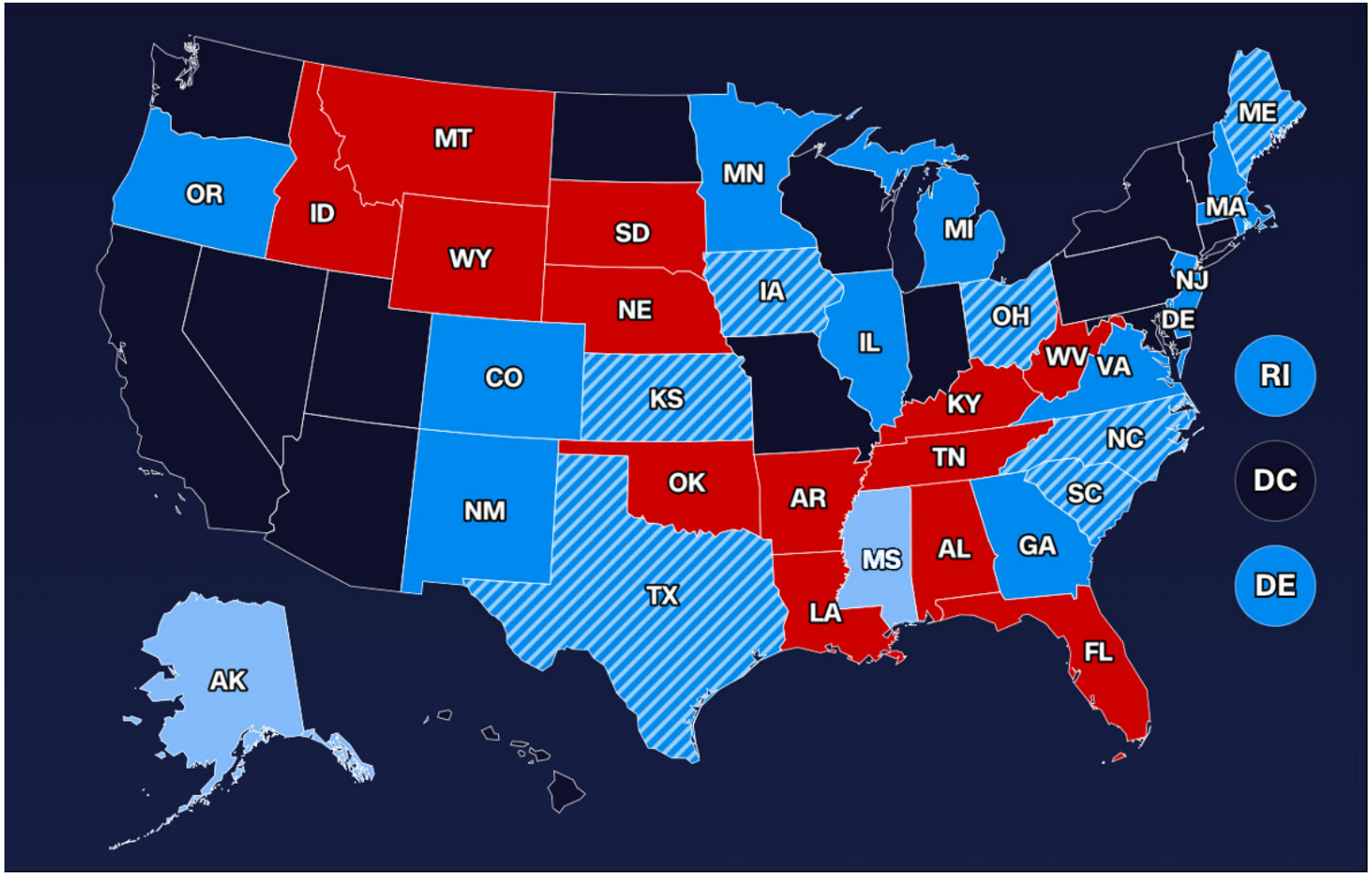
- **Democrats have won control of both the House and Senate,** according to major networks' race calls, securing hefty congressional majorities for the next Congress.
- **House: Democrats have won at least 255 seats and Republicans 165.** Democrats have surpassed the 218 seats needed for a majority; outstanding races will determine its final size.
- **Senate: Democrats and their allied independents have secured at least 55 seats, compared with Republicans' 44.** Alaska remains uncalled, but it will not change Democratic control.
- **Democrats flipped at least seven Republican Senate seats:** Iowa, Kansas, Maine, Mississippi, North Carolina, Ohio, South Carolina, and Texas.
- Alaska remains unresolved: **Democrat Mary Peltola narrowly leads Republican incumbent Dan Sullivan, with approximately 75% of the expected vote reported.** Substantial outstanding ballots leave the outcome uncertain, but leaning Democrat.



Senate Elections

- **Democrats (and Independents who caucus with them) will hold at least 55 seats in the new Senate,** while Republicans will hold 44-45 seats.

2026 SENATE RACE RESULTS



Results as of November 12, 2026

Likely Investigative Priorities in the 120th Congress

120th Congress

Likely Investigative Priorities

DEMOCRATS INVESTIGATE AS TRUMP OKS ALMOST $2 BILLION IN TAXPAYER MONEY TO END OFFSHORE WIND PROJECTS

Senate Democrat Opens Inquiry Into Iran Transactions on Binance

House Democrats accuse Trump of 'hijacking' America's 250th birthday for his own gain

House Democrats Investigating Reports DOJ Withheld Epstein Files Involving Trump

Dems Press More Companies For Terms Of MFN Deals, Tariff Exemptions

Democrats to investigate Trump, oil companies' coordination on Venezuela

TOP DEMS PROBE TRUMP BALLROOM, EAST WING DEMOLITION

120th Congress Likely Investigative Priorities

Democrats are planning an enforcement agenda centered around twin aims of oversight of the Trump administration and improving affordability. Large corporations viewed as allies of the administration or culpable for rising prices may find themselves in the crosshairs.

Top Priorities

1. **Trump Corruption**
   - Including entities that:
     - *Made deals with the Administration*
     - *Paid for presidential projects*
     - *Benefited from the Administration's influence*
     - *Did business with members of the Administration or the President's family*
2. **Corporate Corruption**
3. **Affordability**
   - Healthcare
   - Housing
   - The role of private equity
4. **Artificial Intelligence**
5. **Social Media and Child Safety**

Additional Priorities

- **Algorithmic and surveillance pricing**
- **Data centers**
- **Corporate DEI and civil rights rollback**
- **Cryptocurrency & the Digital Asset Industry**
- **Prediction markets**
- **Venezuela oil & offshore wind lease cancellations**
- **DHS and immigration contractors**
- **Merger approvals**
- **Jeffrey Epstein**



Likely Chairs of Key House Committees



Robert Garcia
(D-CA)
Oversight & Government Reform



Jamie Raskin
(D-MD)
Judiciary



Maxine Waters
(D-CA)*
Financial Services



Frank Pallone
(D-NJ)
Energy & Commerce



Richard Neal
(D-MA)
Ways & Means



Bennie Thompson
(D-MS)
Homeland Security



Gregory Meeks
(D-NY)
Foreign Affairs



Bobby Scott
(D-VA)*
Education and Workforce



Ro Khanna
(D-CA)
Select Committee on the CCP



Mark Takano
(D-CA)
Veterans' Affairs



Jared Huffman
(D-CA)
Natural Resources

***Chair status may be contested**

House: Likely Chairs' Stated Agendas and Priority Targets



Robert Garcia (D-CA)
Oversight and Government Reform

"Lawyer up."

STATED AGENDA

Trump family business dealings, corporate corruption, DHS and ICE conduct, and the Epstein files. Promises public Epstein hearings that "center the survivors."

PRIORITY TARGETS

White House ballroom donors. No-bid contractors, including the Reflecting Pool contractor. Companies he says are "ripping off" the public. "Anyone who has been in bed with the Trumps."



Frank Pallone (D-NJ)
Energy and Commerce

"The days of Trump getting a free pass are over."

STATED AGENDA

Democrats "will investigate the widespread and blatant corruption." Policy agenda pairs lower costs, health care, consumer protection, and clean energy with a pledge to "rein in Big Tech." Opposes an AI select committee, keeping AI oversight at E&C.

PRIORITY TARGETS

Pharma with MFN pricing deals. Surveillance and algorithmic pricing. Frontier AI developers.



Jamie Raskin (D-MD)
Judiciary

"We will not hesitate to go after the private corporations that are collaborating."

STATED AGENDA

Law firms that struck deals with the Administration "can expect to be subpoenaed" in January. Says the firms "capitulated" and were "not forthcoming" in response to his letters.

PRIORITY TARGETS

Law firms that struck deals with the administration. "Pardon brokers." Tariff-exemption recipients and donations to the Administration.

Likely Chairs of Key Senate Committees



Ron Wyden (D-OR)
Finance



Elizabeth Warren (D-MA)*
Banking



Sheldon Whitehouse (D-RI)
Judiciary



Richard Blumenthal (D-CT)
PSI



Maria Cantwell (D-WA)
Commerce



Bernie Sanders (I-VT)
HELP



Maggie Hassan (D-NH)
Homeland Security

***Chair status may be contested**

Senate: Likely Chairs' Stated Agendas and Priority Targets



Ron Wyden (D-OR)

Finance

"Subpoenas."

STATED AGENDA

"Affordability for us, accountability for them." Will force bank, insurer, and pharma executives to "answer to the Senate Finance Committee."

PRIORITY TARGETS

Banks that "helped cover up Epstein's crimes. Insurers delaying and denying care. Pharma CEOs with MFN deals. Oil companies and Venezuela.



Richard Blumenthal (D-CT)

Permanent Subcommittee on Investigations

"The tentacles of corruption reach deep in this administration."

STATED AGENDA

Wants hearings on Trump real estate projects around D.C., crypto dealings, ICE raids, DOGE, and restrictive Medicare Advantage plans. Seeks sworn testimony on law firm deals.

PRIORITY TARGETS

White House ballroom donors. Crypto platforms. Medicare Advantage insurers. Trump-affiliated real estate projects. Law firms that struck deals with the administration.



Elizabeth Warren (D-MA)

Banking, Housing, and Urban Affairs

Pledged to focus on crypto industry deals with the President and his family.

STATED AGENDA

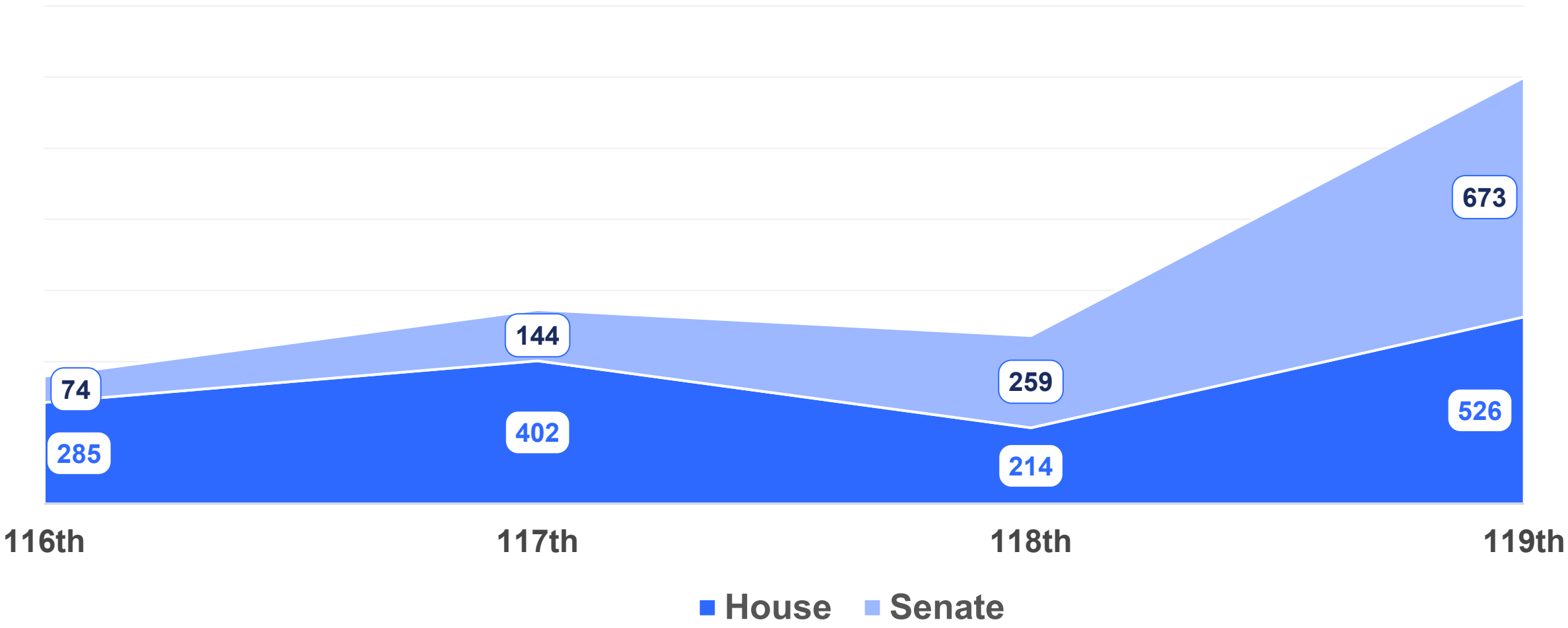
Outspoken about focusing on crypto industry ties to the Trump family. Has pressed regulators since 2025 to investigate bankers who enabled Epstein and sought supervisory records on his banks. Also signals private credit transparency, bank mergers, stress testing, and Federal Reserve independence.

PRIORITY TARGETS

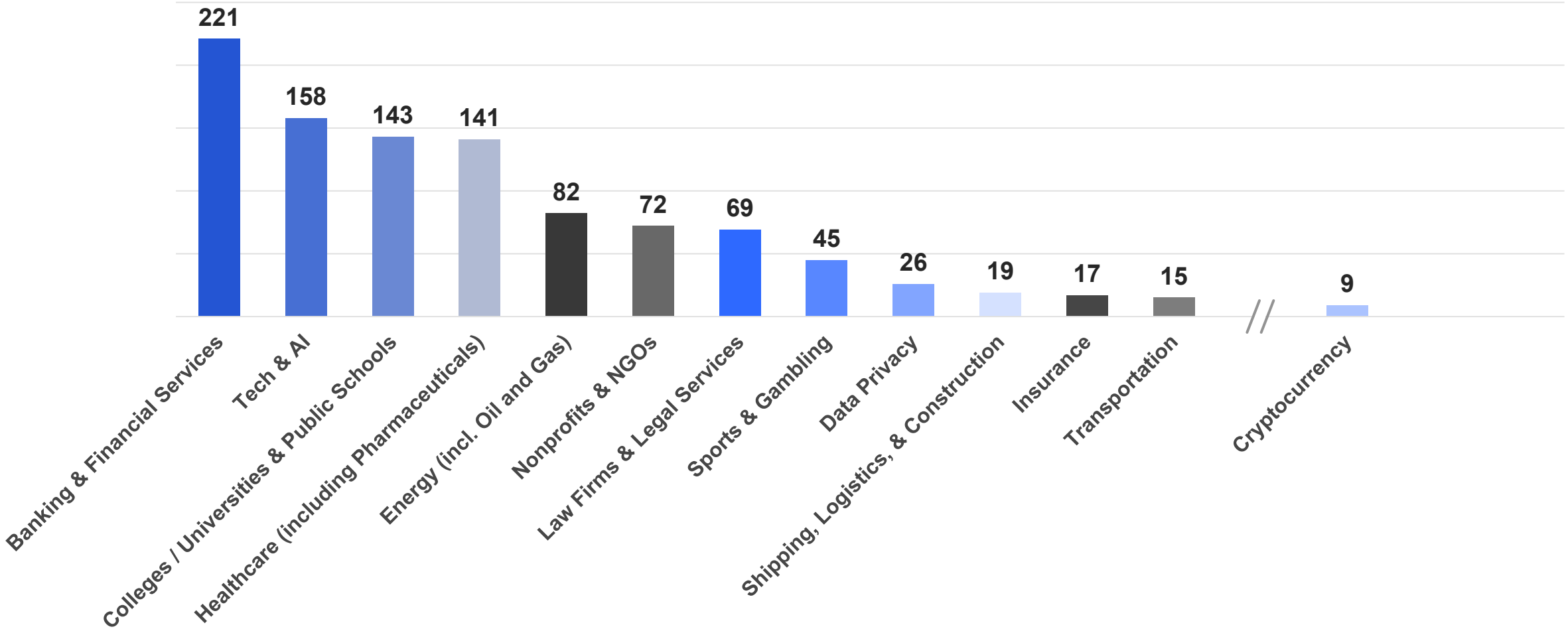
Crypto platforms. Large bank CEOs on Epstein-era compliance. Private credit and bank exposure to nonbanks. Big Tech AI tax subsidies.

Congressional Investigations by the Numbers

Total Investigations by Congress



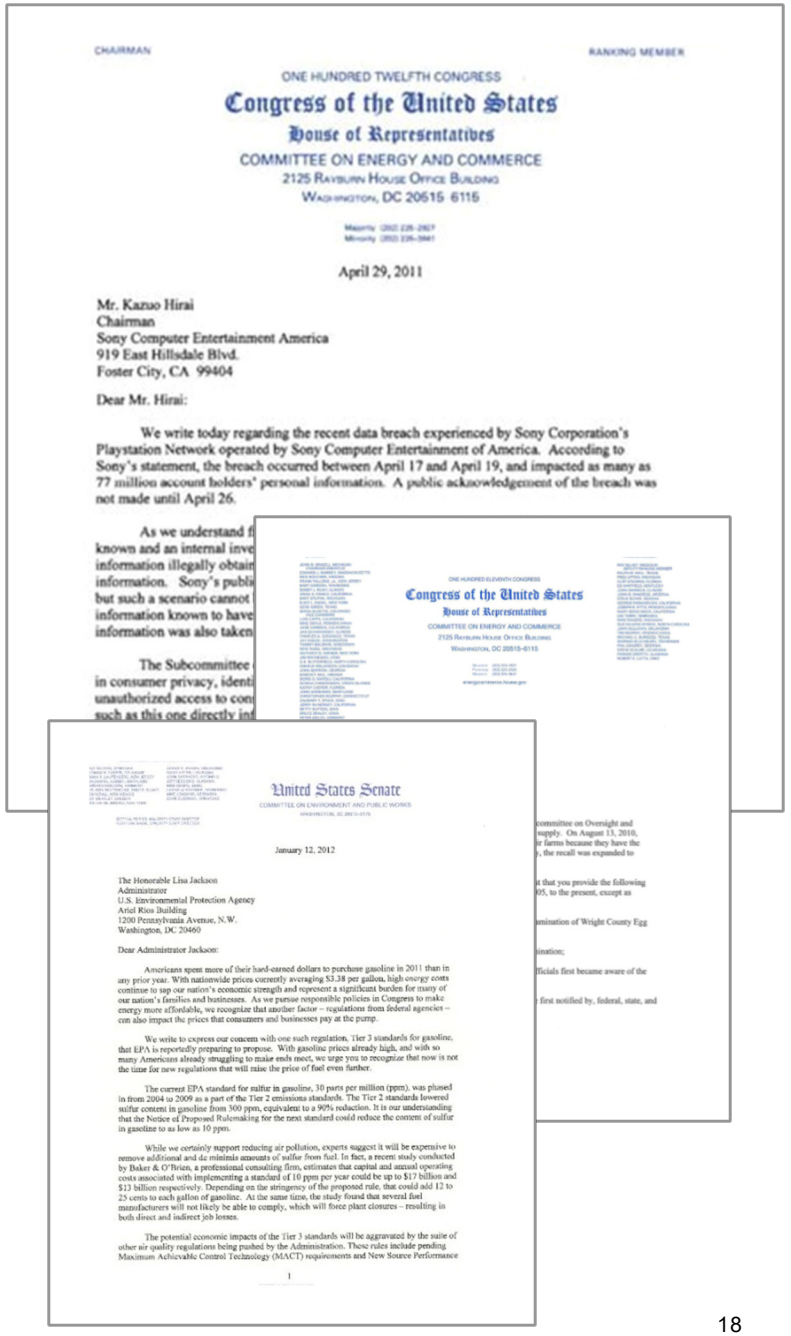
House and Senate Investigations in the 119th Congress by Sector (as of mid-October)



Congressional Investigations 101

Congressional Investigatory Tools

- Requests for information
- Interviews and depositions
- Hearings
- Subpoenas
  - Generally no pre-enforcement review
- Contempt proceedings
- Referral to executive branch for criminal prosecution
  - Congress may refer, but executive branch may proceed regardless of Congress's views.
  - Prosecute false statements to Congress, obstruction, destruction of evidence, etc.


CHAIRMAN

RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 Rayburn House Office Building

Washington, DC 20515 6115

April 29, 2011

Mr. Kazuo Hirai
Chairman
Sony Computer Entertainment America
919 East Hillsdale Blvd.
Foster City, CA 99404

Dear Mr. Hirai:

We write today regarding the recent data breach experienced by Sony Corporation's Playstation Network operated by Sony Computer Entertainment of America. According to Sony's statement, the breach occurred between April 17 and April 19, and impacted as many as 77 million account holders' personal information. A public acknowledgement of the breach was not made until April 26.

United States Senate

January 12, 2012

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson:

Americans spent more of their hard-earned dollars to purchase gasoline in 2011 than in any prior year. With nationwide prices currently averaging $3.38 per gallon, high energy costs continue to sap our nation's economic strength and represent a significant burden for many of our nation's families and businesses. As we pursue responsible policies in Congress to make energy more affordable, we recognize that another factor – regulations from federal agencies – can also impact the prices that consumers and businesses pay at the pump.

We write to express our concern with one such regulation, Tier 3 standards for gasoline, that EPA is reportedly preparing to propose. With gasoline prices already high, and with so many Americans already struggling to make ends meet, we urge you to recognize that now is not the time for new regulations that will raise the price of fuel even further.

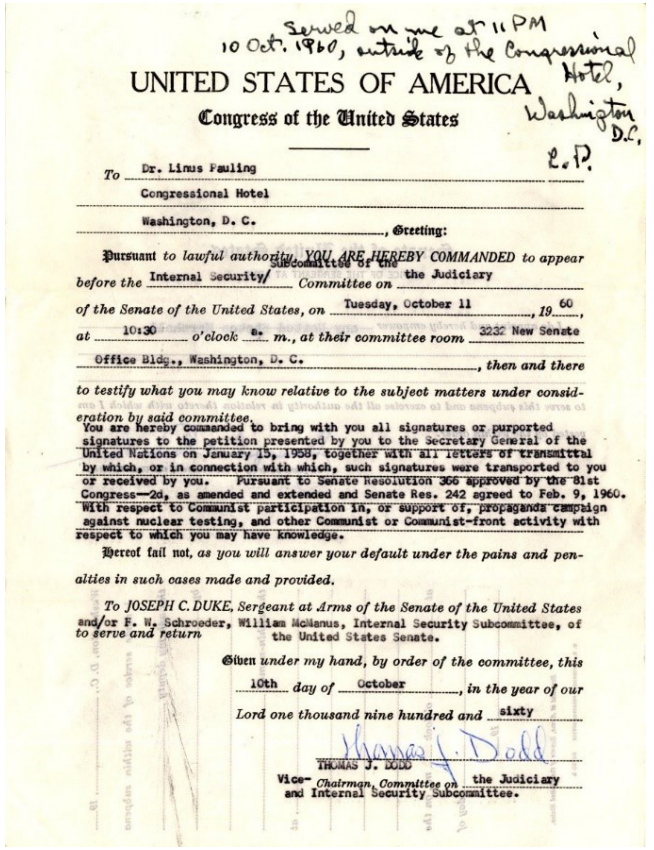
The current EPA standard for sulfur in gasoline, 30 parts per million (ppm), was phased in from 2004 to 2009 as a part of the Tier 2 emissions standards. The Tier 2 standards lowered sulfur content in gasoline from 300 ppm, equivalent to a 90% reduction. It is our understanding that the Notice of Proposed Rulemaking for the next standard could reduce the content of sulfur in gasoline to as low as 10 ppm.

While we certainly support reducing air pollution, experts suggest it will be expensive to remove additional and de minimis amounts of sulfur from fuel. In fact, a recent study conducted by Baker & O'Brien, a professional consulting firm, estimates that capital and annual operating costs associated with implementing a standard of 10 ppm per year could be up to $17 billion and $13 billion respectively. Depending on the stringency of the proposed rule, that could add 12 to 25 cents to each gallon of gasoline. At the same time, the study found that several fuel manufacturers will not likely be able to comply, which will force plant closures – resulting in both direct and indirect job losses.

The potential economic impacts of the Tier 3 standards will be aggravated by the suite of other air quality regulations being pushed by the Administration. These rules include pending Maximum Achievable Control Technology (MACT) requirements and New Source Performance

Subpoena Power

- Document requests usually begin with a letter and may be followed by a subpoena, if necessary.
- Every standing committee has the authority to issue subpoenas. This is authorized under both House and Senate rules, but the specific procedures vary by committee.
- House rules give more authority to committee chairs.
  - House chairs may issue subpoenas unilaterally, with only notice to ranking members.
  - Senate rules are more restrictive; only the Senate's Permanent Subcommittee on Investigations permits the chair to issue a subpoena with only notice to the ranking member.
- Subpoenas can be friendly.
- Recipient cannot quash a subpoena.



Served on me at 11 PM
10 Oct. 1960, outside of the Congressional Hotel, Washington D.C.
L.P.

UNITED STATES OF AMERICA
Congress of the United States

To Dr. Linus Pauling
Congressional Hotel
Washington, D. C., Greeting:

Pursuant to lawful authority, YOU ARE HEREBY COMMANDED to appear before the Internal Security Subcommittee of the Committee on the Judiciary of the Senate of the United States, on Tuesday, October 11, 1960, at 10:30 o'clock a. m., at their committee room 3232 New Senate Office Bldg., Washington, D. C., then and there to testify what you may know relative to the subject matters under consideration by said committee.

You are hereby commanded to bring with you all signatures or purported signatures to the petition presented by you to the Secretary General of the United Nations on January 15, 1958, together with all letters of transmittal by which, or in connection with which, such signatures were transported to you or received by you. Pursuant to Senate Resolution 366 approved by the 81st Congress—2d, as amended and extended and Senate Res. 242 agreed to Feb. 9, 1960. With respect to Communist participation in, or support of, propaganda campaign against nuclear testing, and other Communist or Communist-front activity with respect to which you may have knowledge.

Hereof fail not, as you will answer your default under the pains and penalties in such cases made and provided.

To JOSEPH C. DUKE, Sergeant at Arms of the Senate of the United States and/or F. W. Schroeder, William McManus, Internal Security Subcommittee, of the United States Senate. to serve and return

Given under my hand, by order of the committee, this 10th day of October, in the year of our Lord one thousand nine hundred and sixty

Thomas J. Dodd
THOMAS J. DODD
Vice-Chairman, Committee on the Judiciary and Internal Security Subcommittee.

Defenses to Congressional Investigations and Related Considerations

Congressional Investigations Defenses – Private Parties

Legislative Purpose	First Amendment
Fourth Amendment	Fifth Amendment
Attorney-Client Privilege & Attorney Work Product	Committee Jurisdiction & Procedural Defenses

Significance of *Mazars*

Mazars and Common Law Privileges/Protections

Congress has traditionally taken the position that it is not bound to recognize common law privileges. In *Mazars*, the Court stated that recipients of congressional subpoenas retain ***both*** "common law and constitutional privileges with respect to certain materials, such as attorney-client communications and governmental communications protected by executive privilege."

- While the Court's treatment of common law privileges in *Mazars* is arguably dicta, both the **executive branch and private litigants can be expected to take the position** that Congress is obligated to observe common law privileges **in the same way that courts and grand juries must observe them.**

Standard for showing valid "legislative purpose": In *Mazars*, the Court announced what it called a "balanced approach" to govern future interbranch disputes, one that it viewed as protecting Congress's ability to investigate the president while also mitigating the risk of improper congressional inquiry.

Mazars held that "[u]nlike in criminal proceedings. . . efforts to craft legislation involve predictive policy judgments that are not hampered in quite the same way **when every scrap of potentially relevant evidence is not available."**



Renewed Significance of the Deliberative Process Privilege

Deliberative Process Privilege: A Component of Executive Privilege

What is executive privilege?

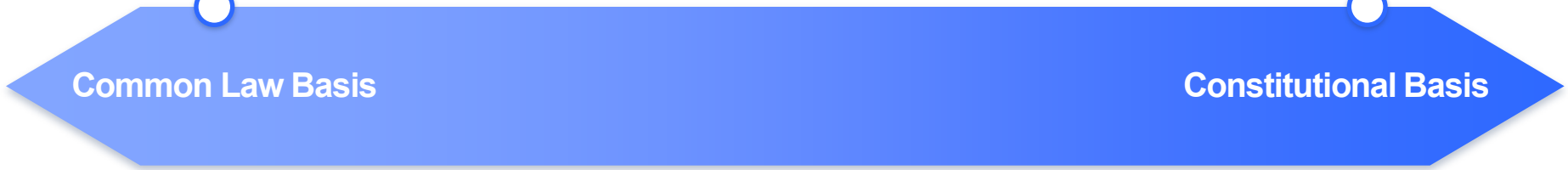
Executive privilege is not a single privilege but an umbrella term. Its component privileges rest on different legal foundations, and those foundations shape the strength of each. Two examples are the deliberative process privilege, rooted in the common law, and the presidential communications privilege, rooted in the Constitution.

Deliberative Process Privilege

Protects the candor of ordinary agency decision-making

Presidential Communications Privilege

Protects the President's own decision-making



Does Deliberative Process Privilege Apply?

Requirements:

Predecisional

- Generated before the agency's final decision on the matter, as part of the process of reaching that decision.
- Must precede, in temporal sequence, the decision to which it relates. It cannot be an explanation or justification offered after the fact.

Deliberative

- Reflects the give-and-take of the consultative process (e.g. opinions, recommendations, and advice about how the agency should act).
- Purely factual material is generally not deliberative and not protected, unless so intertwined with the deliberative process that disclosure would expose it.
- Final opinions and statements of policy actually adopted are not deliberative (they are the decision, not the deliberation).

Can the Privilege Be Overcome? The Balancing Test

WEIGHS TOWARD DISCLOSURE ▶	FACTOR	◀ WEIGHS TOWARD PRIVILEGE
Central and highly probative to the matter	**1. Relevance of the material**	Marginal or tangential relevance
Unavailable from any other source	**2. Availability of evidence elsewhere**	Obtainable from other sources
Serious issue; significant public stakes	**3. Seriousness of the matter**	Routine dispute; low stakes
Government is a party or its conduct is at issue	**4. Government's role as a party**	Government is a neutral non-party
Little chilling effect on future candor	**5. Risk of future "timidity"**	High risk of chilling candid advice

No single factor is dispositive and the list is non-exclusive—courts weigh case-by-case, document-by-document.

Misconduct exception: where serious government misconduct is shown, the privilege can "disappear altogether" (*Espy*).

Third Party Discovery

Committees frequently seek records from third parties—not just the investigative target—to corroborate and fill gaps.



Communications providers

ISPs, email, phone, and messaging services



Banks & accounting firms

Financial records and audit materials



Individuals & groups

Persons and organizations close to the target



Interacting companies

Businesses dealing with the target

LEGAL AUTHORITY

Stored Communications Act governs when providers may disclose stored communications and records.

COMMITTEE AUTHORITY

Committee rules set each committee's investigatory and subpoena authority (Rules).

PRIVILEGE CONCERNS

The Office of Legal Counsel's recent Opinion advises that executive privilege extends to confidential communications with third parties.

Executive Privileges for Communications with Outside Advisors

Can communications between the President and <u>private</u> advisers be shielded by executive privilege?

- A recent OLC opinion answered this in the affirmative so long as the communications:
  1. "relate to official **presidential decision-making**,"
  2. "involve or reflect communications with the **President** or his **direct advisers**," and
  3. "are **confidential**."
- With this new Opinion, the Government may argue that communications between *any member of the executive branch* and a third party are protected by Deliberative Process Privilege.

Preparing for a Congressional Investigation

Proactive Steps to Prepare for Congressional Investigations

Internal foundations – team & risk

I. Assembling the Team

- Identify and engage key stakeholders internally
- Engage experienced outside counsel early
- Ensure access to comms and GR assets

II. Proactive Risk Assessments

- Identify “High-Value” corporate targets
- Targeted document collection and review
- Perform privileged internal risk assessments of potential investigative avenues
- Conduct proactive table-top exercises

Proactive Steps to Prepare for Congressional Investigations

External steps – committee & communications

III. Committee Strategy

- Gather intelligence from peer organizations
- Maintain relationships with committee staff
- Determine the appropriate outreach leads
- Align lobbying goals with potential scrutiny

IV. Communications Strategy

- Synchronize messaging (Press & Investors)
- Prepare “Off-the-Shelf” Response Kits

Proactive Steps to Prepare for Congressional Investigations

Operational hygiene

V. Operational Hygiene

- Assess and update Document Retention Policies
- Safeguard Attorney-Client Privilege strategies
- Address confidentiality for trade secrets
- Good hygiene training for key employees

Top Mistakes

Facts: failure to identify and verify

Corporate message: unclear or undetailed

Internal communications: understanding the risks and settling on a strategy

Context: failure to adapt to type of investigation

Knowing the rules: vary by committee

Big picture: anticipating what might come next

Care and concern: inadequate attention

Legal: preserving privilege and assessing collateral consequences

Pitfalls of Noncompliance, Poor Strategy & Poor Preparation

Headlines that followed high-profile congressional investigations



Upcoming Programs

2026/2027 White Collar Webcast Series

Date and Time	Program	Registration Link
Tuesday, December 1, 2026 **9:00 AM – 11:00 AM PT** **12:00 PM – 2:00 PM ET**	**FCPA and Anti-Corruption Enforcement Trends in Global Markets** Speakers: Michael Diamant, Katharina Humphrey, Ning Ning, Benno Schwarz, Patrick Stokes, Oliver Welch	Event Details
Thursday, December 10, 2026 **9:00 AM – 10:00 AM PT** **12:00 PM – 1:00 PM ET**	**Corporate DEI Enforcement** Speakers: Stephanie Brooker; Mylan Denerstein; Karin Portlock; Jake Shields	Event Details



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