

# Congressional Oversight and Investigations

## Public Affairs Council Presentation

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Holland & Knight

# Presenters



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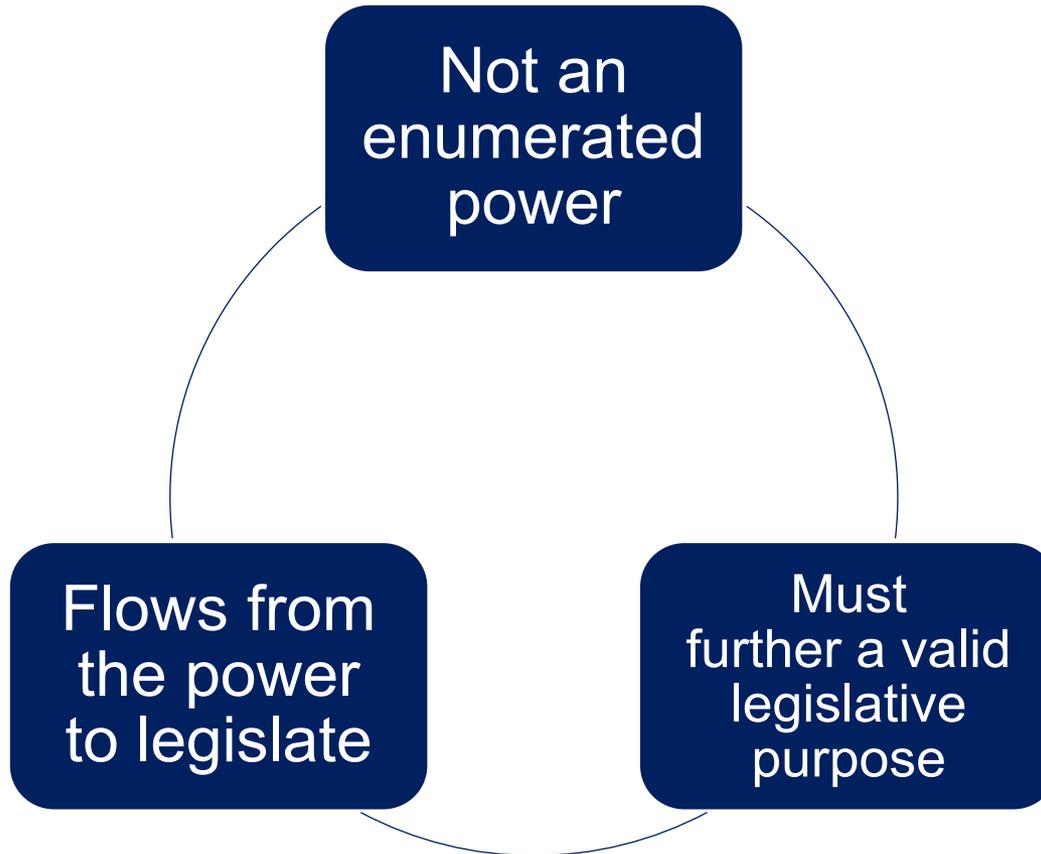
# Congressional Investigations – Background, Powers, and Limitations

- Congress's investigative powers do not appear in the Constitution
- Courts have long held that the power to legislate requires a corollary power to determine facts

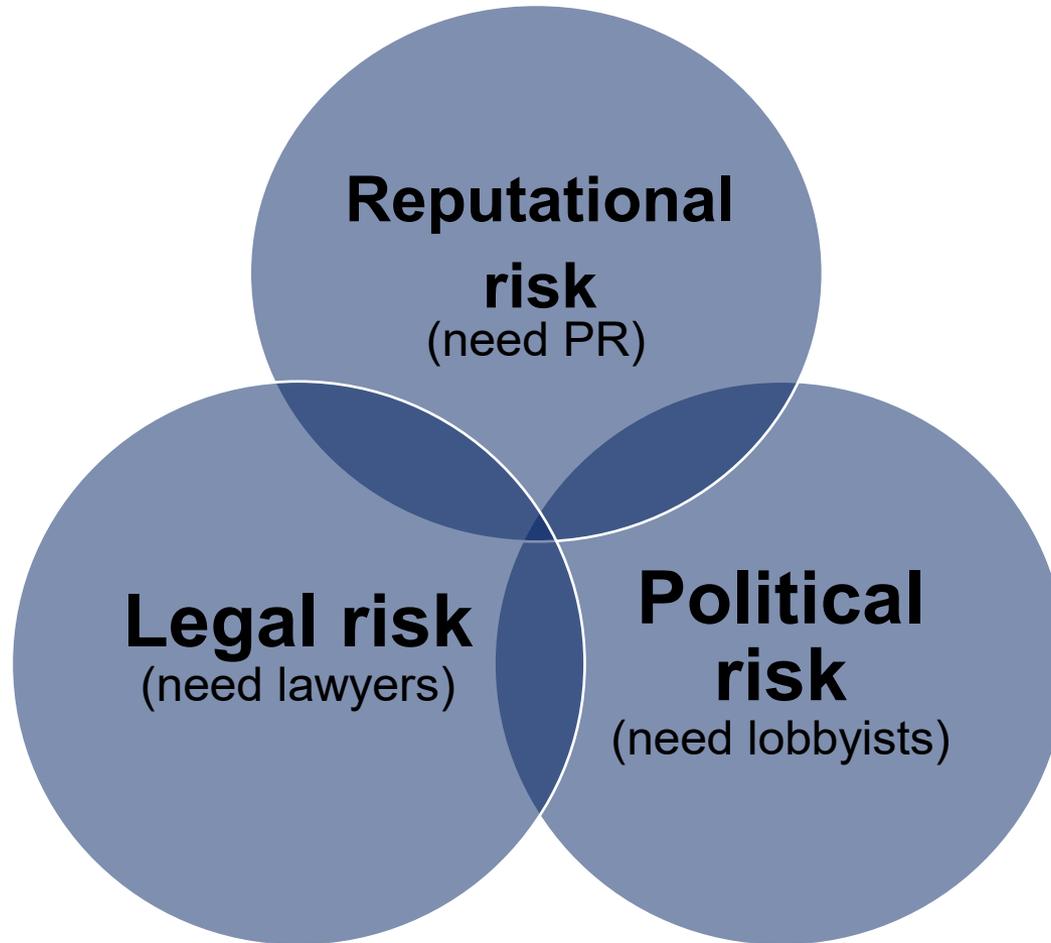
***“...the power of inquiry – with process to enforce it – is an essential and appropriate auxiliary to the legislative function.”***

*– McGrain v. Daugherty, 273 U.S. 135, 174 (1927).*

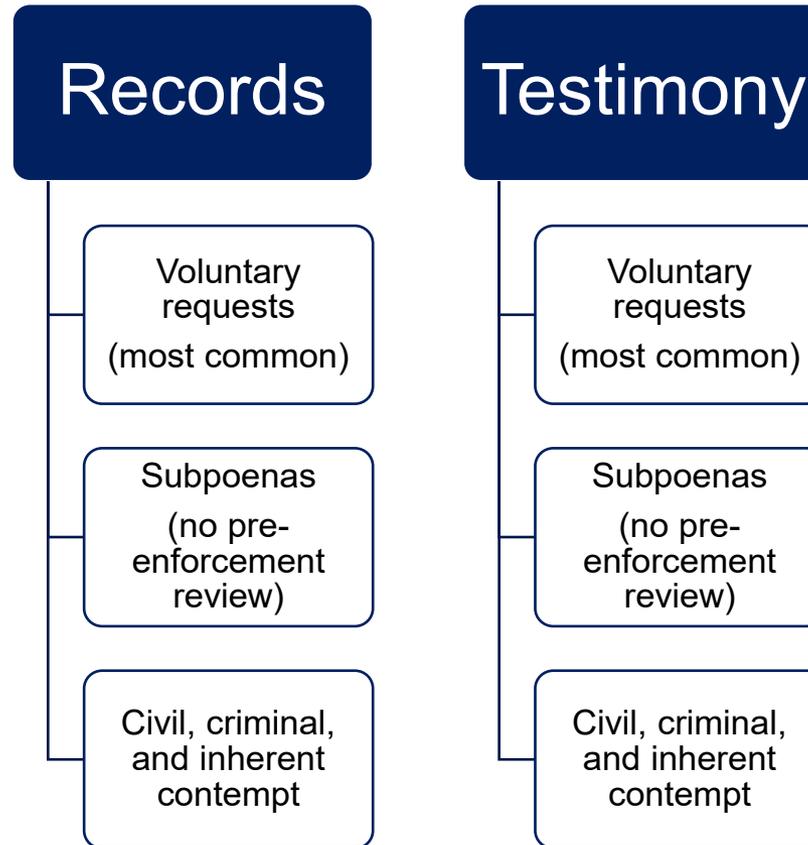
# Congress's Power to Investigate



# Congressional Oversight: a Unique Challenge



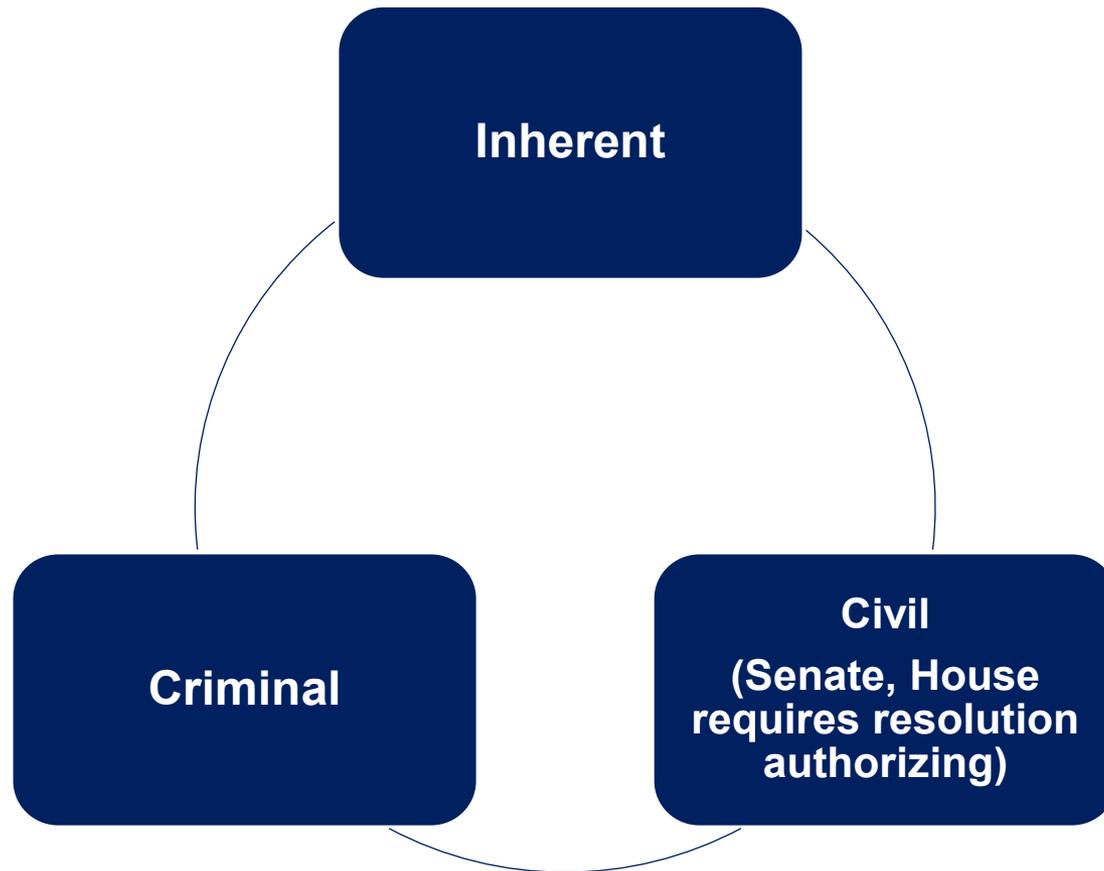
# Congress's Power to Investigate



# Congress's Power to Investigate: **Subpoenas**

- Nearly every committee has the authority to issue subpoenas for records or testimony (hearing or deposition)
- Committee rules differ on issuance (i.e., by the Chair alone, Chair-Ranking Member agreement, or majority vote)
- Clients may request “friendly” subpoenas

# Congress's Power to Investigate: **Contempt**



# Congress's Power to Investigate: **Limitations**

- Negotiated: attorney-client privilege, attorney work product, trade secret, narrowing of scope
- Constitutional: Fifth Amendment
- Arguable (when you get to court): committee jurisdiction, legislative purpose, failure to comply with Committee rules

# Congress's Power to Investigate: **The Role of Counsel**



# Congressional Investigations – Issues in the 118<sup>th</sup> Congress

# Congressional Investigations in the 118<sup>th</sup> Congress: Key Committees



## House of Representatives

- Oversight and Accountability
- Energy and Commerce
- Ways and Means
- Homeland Security
- Judiciary
- Select Committee on CCP



## Senate

- Finance
- Permanent Subcommittee on Investigations
- Health, Education, Labor & Pensions
- Senator Warren's personal office

# Congressional Investigations in the 118<sup>th</sup> Congress



## House

- Biden Administration
- Border security
- COVID-19 matters
- Government contractors
- Tax-exempt entities



## Senate

- Tax-related practices of multi-nationals
- Drug pricing
- Labor practices



## Bicameral

- Healthcare Prices
- Consumer Privacy
- “Big Tech”
- China

# January 6 Select Committee Investigation

**John Wood**

***“...the answer is likely to lie in the hurly-burly,  
the give-and-take of the political process  
between the legislative and executive.”***



Antonin Scalia  
Assistant Attorney General  
Office of Legal Counsel  
1975

# January 6 Select Committee

**7 Democrats**

**2 Republicans**

**64 Staff Members**



Chair  
Bennie Thompson (D-MS)



Vice Chair  
Liz Cheney (R-WY)



Adam Kinzinger (R-IL)



Pete Aguilar (D-CA)



Stephanie Murphy (D-FL)



Zoe Lofgren (D-CA)



Jamie Raskin (D-MD)



Elaine Luria (D-VA)



Adam Schiff (D-CA)

# Documents

**100+**  
subpoenas  
issued

Production from the  
National Archives  
and government  
agencies.

**1,000,000 +**  
documents  
reviewed



# Interviews



**1,200 Interviews**

- Informal interviews
- Transcribed interviews
- Depositions

**10 Hearings**

**18 Months**

# Privileges



Executive  
Privilege



Attorney-Client  
Privilege



Right Against  
Self-  
Incrimination

# Unresolved Executive Privilege Assertions



**Steve Bannon**



**Mark Meadows**



**Dan Scavino**



**Peter Navarro**

# What Not To Do



**John Eastman**

# District Court Ruling

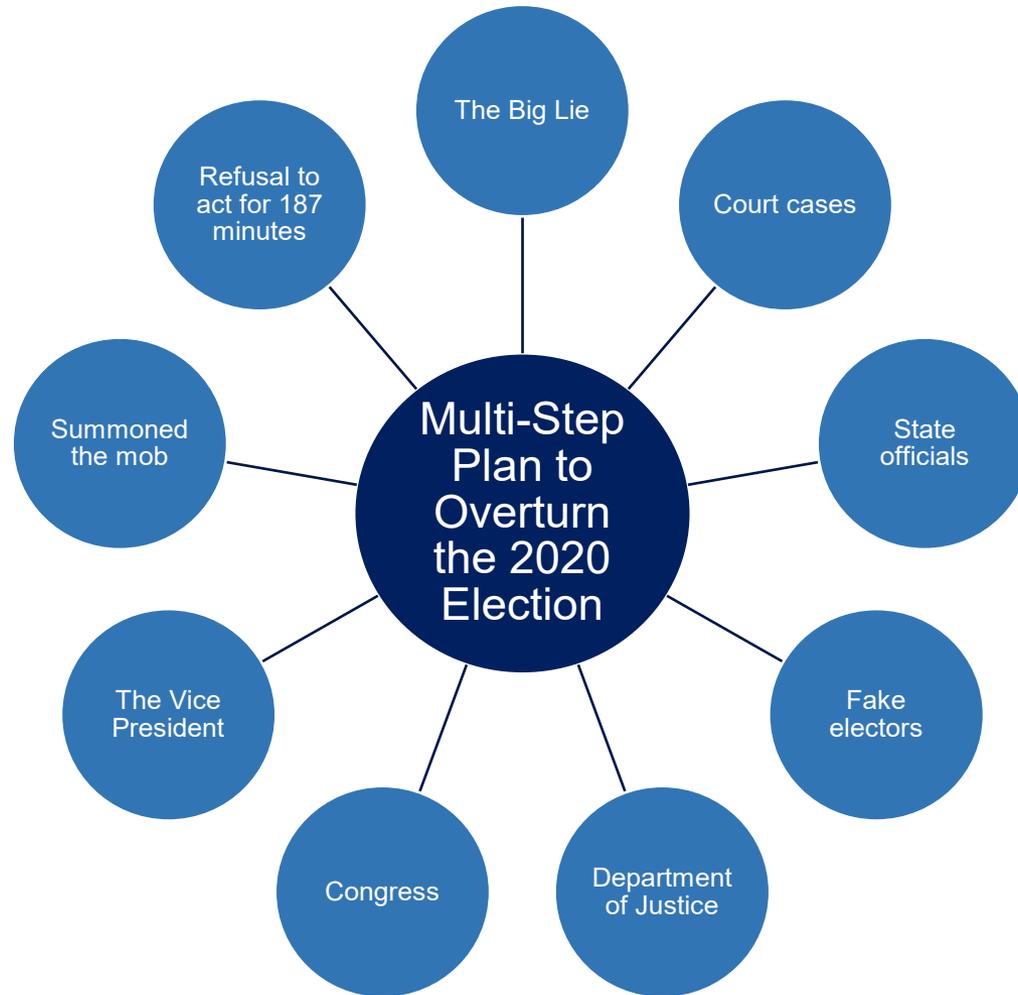
Court found that more likely than not:

*“President Trump attempted to obstruct ‘Congress’s proceedings to count the electoral votes on January 6,’ in violation of 18 U.S.C. § 1512(c)(2);*

*‘President Trump, Plaintiff [Dr. Eastman], and several others entered into an agreement to defraud the United States by interfering with the election certification process,’ in violation of 18 U.S.C. § 371”*



# Findings of the Committee



# Raising the Bar for Presentations

86 witnesses (live or recorded) over 10 hearings



# Use of Imagery



# Prosecutorial Influence of Report

**Fani Willis**

*GA District Attorney*



**Jan. 6**

**Committee Report**



**Jack Smith**

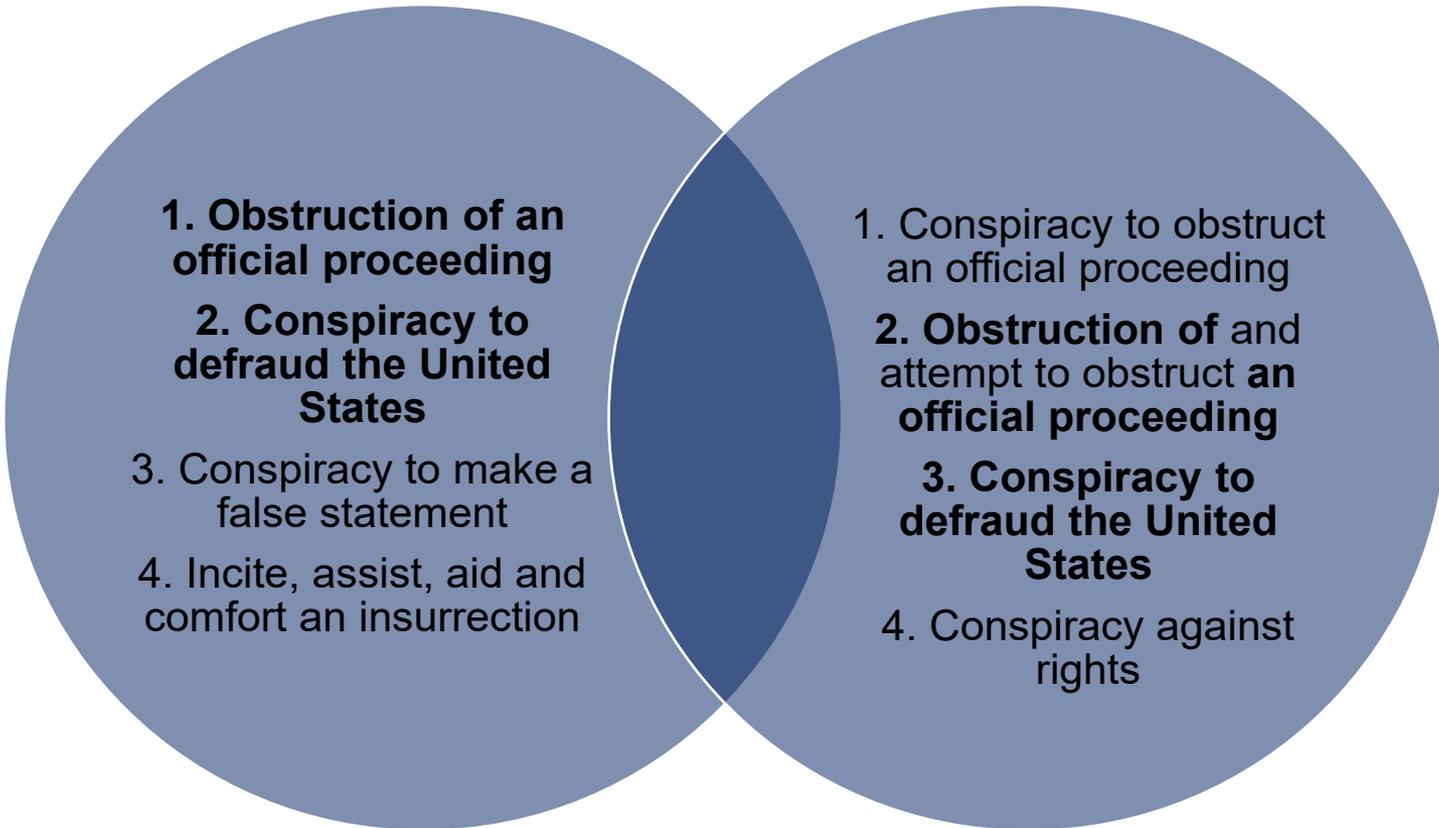
*DOJ Special Counsel*



# Criminal Referrals vs Special Counsel Charges

## Jan 6 Select Committee Criminal Referrals

## Special Counsel Charges



**Questions?**

# Contact information

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**Thank You**