

## Overview

As Democrats take back the gavel in the House of Representatives, several incoming committee chairs have said they will use their leadership power to issue subpoenas. During the 115<sup>th</sup> Congress, Republican-led committees with oversight authority over Cabinet officials and departments issued very few subpoenas, despite Democratic requests. Democrats have indicated they will use their committee chairmanships to investigate various matters, such as President Trump's tax returns, election security and hacking attempts, the Hurricane response in Puerto Rico, Homeland Security's family separation policy, and White House security clearances. This Basic examines the scope of the House of Representatives' subpoena power and authority.

## What is a Congressional Subpoena?

Congressional subpoena power is defined as: "the authority granted to committees by the rules of their respective houses to issue legal orders requiring individuals to appear and testify, or to produce documents pertinent to the committee's functions, or both." Provided in clause 2(m)(1) and (3) of House Rule XI, House committees and subcommittees specifically have the authority to subpoena documents, information, and in-person sworn testimony at public and closed-door hearings; however, the conditions under which committees issue subpoenas can vary. For example, committee chairs often have to consult or notify the committee's ranking minority members when issuing a subpoena. In some committees, the subpoena may be served by any person designated by the chair. Additionally, the *subcommittees* of the Appropriations, Armed Services, House Administration, and Transportation and Infrastructure committees are granted subpoena authority.

## Failing to Comply with a Subpoena

If an individual fails to comply with a subpoena request, there are three formal remedies that can be taken. First, Congress has the ability to detain the individual subpoenaed until he or she complies with the subpoena request. Although this power is granted, it has not been used since 1935. Second, the request can be referred to the U.S. Attorney for the District of Columbia "to pursue criminal contempt proceedings." Lastly, the House of Representatives can seek a civil enforcement judgement from a district court under the *Ethics in Government Act of 1978*. This option had been used the most frequently. If the court decides that the subpoena request is valid, it orders that the individual must comply.

Beginning in 2007, the House frequently employed the third method for non-compliance with a subpoena: seeking a civil judgment from a federal court. The House used this method to investigate the George W. Bush administration's firing of eight US Attorneys that may have been politically motivated. Additionally

## Center Forward Basics

Center Forward brings together members of Congress, not-for-profits, academic experts, trade associations, corporations and unions to find common ground. Our mission: to give centrist allies the information they need to craft common sense solutions, and provide those allies the support they need to turn those ideas into results.

In order to meet our challenges we need to put aside the partisan bickering that has gridlocked Washington and come together to find common sense solutions.

For more information, please visit [www.center-forward.org](http://www.center-forward.org)

## Key Facts

In October 2017, the House of Representatives passed H.R. 4010, the Congressional Subpoena Compliance and Enforcement Act. This law would establish new rules if an individual fails to comply with a Congressional subpoena request. The sponsors of the bill will not be returning to Congress in the 116th Congress and it is expected that the bill not be reintroduced.

The Supreme Court Case of *Wilkinson v. United States* decided in 1961 that a congressional committee must meet three requirements for its subpoena to be considered legal. For example, the investigation must pursue "a valid legislative purpose" but does not need to involve legislation. The inquiry must be under the jurisdiction that has been

in 2009, the House sought a judgment from a court when Attorney General Eric Holder did not comply with a subpoena requesting more information about the Justice Department's Fast and Furious operation.

authorized for investigation. Finally, the committee's investigation must be under the subject area that the chamber covers.

## What Next?

During the 115<sup>th</sup> Congress, Democrats on the Committee on Oversight and Reform requested more than 64 subpoenas. These topics varied from security clearances at the White House, to cabinet officials' use of chartered jets, to the Justice Department's decision not to defend the Affordable Care Act. All of these requests were denied by the chairmen of the committees, while Republicans in the majority of the Committee on Oversight and Government Reform issued just one subpoena. Given their repeated calls for inquiry in the past, it is likely Democrats will return to the 116th Congress with a renewed interest in providing a check on the Trump Administration through the use of subpoenas.

## Links to Other Resources

- Axios — Democratic Hit List: At Least 85 Trump Investigation Targets  
<https://www.axios.com/2018-midterm-elections-house-democrats-investigations-6bcfab1-f1b2-49ce-8014-3e9b0c30db6c.html>
- Bloomberg — Democrats Gain Subpoena Power They Can Use to Investigate Trump  
<https://www.bloomberg.com/news/articles/2018-11-07/democrats-biggest-gain-is-subpoena-power-to-quiz-trump-aides>
- Congress.Gov — Congressional Subpoena Compliance and Enforcement Act of 2017  
<https://www.congress.gov/bill/115th-congress/house-bill/4010>
- Congressional Research Service — A Survey of House and Senate Committee Rules on Subpoenas  
[https://www.everycrsreport.com/files/20180129\\_R44247\\_ffec8450a8d07460d77b4a1cb3d1a81f95008651.pdf](https://www.everycrsreport.com/files/20180129_R44247_ffec8450a8d07460d77b4a1cb3d1a81f95008651.pdf)
- Congressional Research Service — Congress's Contempt Power and the Enforcement of Congressional Subpoenas: Law, History, Practice, and Procedure  
<https://www.everycrsreport.com/reports/RL34097.html>
- FTI Consulting — A Blue Wave Washes Over the House of Representatives  
<https://www.fticonsulting.com/insights/fti-journal/blue-wave-washes-over-house-representatives>
- House Committee on Oversight and Government Reform Democrats — Oversight Republicans Block 11 More Subpoenas for a Total of 64 Motions Denied  
<https://democrats-oversight.house.gov/news/press-releases/oversight-republicans-block-11-more-subpoenas-for-a-total-of-64-motions-denied>
- House Committee on Oversight and Government Reform Republicans — Committee Releases Report Detailing Patterns of Misconduct and Whistleblower Retaliation at TSA  
<https://oversight.house.gov/report/committee-releases-report-detailing-patterns-of-misconduct-and-whistleblower-retaliation-at-tsa-2/>

- Mayer-Brown — Understanding Your Rights in Response to a Congressional Subpoena  
<https://www.mayerbrown.com/files/Publication/ec1203b2-a787-44ac-8344-5d5fab374ffa/Presentation/PublicationAttachment/11509b8b-df81-4db6-9e89-1d1b16c20856/White-Paper-Congressional-Subpoena.pdf>
- The New York Times — Democrats, Eyeing a Majority, Prepare an Investigative Onslaught  
<https://www.nytimes.com/2018/09/03/us/politics/democrats-trump-impeachment.html?module=inline>
- The New York Times — Congress Can Issue Subpoenas. Will They Matter?  
<https://www.nytimes.com/2018/11/08/opinion/congress-democrats-subpoenas-trump.html>