

**JANUARY 8, 2021**

For more information,  
contact:

Theodore M. Hester  
+1 202 626 2901  
theater@kslaw.com

Daniel F. Donovan III  
+1 202 661 7815  
ddonovan@kslaw.com

Alicia C. O'Brien  
+1 202 626 5575  
aobrien@kslaw.com

Thomas J. Spulak  
+1 202 661 7948  
tspulak@kslaw.com

Matthew B. Hanson  
+1 202 626 2904  
mhanson@kslaw.com

William Clarkson V  
+1 202 626 8997  
wclarkson@kslaw.com

Jill Keller Hengen  
+1 404 572 2777  
jkellerhengen@kslaw.com

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**King & Spalding**

Washington, D.C.  
1700 Pennsylvania Avenue,  
NW  
Washington, D.C. 20006-  
4707  
Tel: +1 202 737 0500

## Georgia Results Flip the Senate and Will Lead to More Congressional Investigations

With the majority in both the U.S. House and Senate, Democrats are poised to chair powerful investigative committees in the 117<sup>th</sup> Congress

With the victories of Raphael Warnock over incumbent Kelly Loeffler, and Jon Ossoff over incumbent David Perdue, in two tight run-off races in Georgia, Democrats regained control of the U.S. Senate after six years in the minority. This development significantly alters the existing legislative landscape in the Senate and is also likely to have a major impact on the oversight and investigative agendas of powerful investigative committees with subpoena power in the 117<sup>th</sup> Congress.

With a new Democratic majority, we expect private-sector entities to face increased oversight from the primary Senate oversight committees. Companies from a wide range of industries—including energy, technology, healthcare and life sciences, and financial services—can expect increased public scrutiny from Congress this term. (We also expect the same from committees in the Democrat-led House.)

That will mean more written demands, document requests, calls to appear as witnesses at public hearings, and in-depth investigations resulting in widely publicized reports and extensive media attention. Congressional interest in a particular entity often arises around, or even because of, issues that generate lawsuits or investigations by other federal and state regulators. As a result, companies dealing with high-profile litigation or regulatory issues over the next few years may very well find themselves fielding pointed questions from Congress at the same time.

While committee chairs have yet to be announced, we expect key Democratic oversight leaders in the Senate will likely include members who previously held senior committee and other leadership positions while Democrats were in the minority last Congress:



Committee / Subcommittee	Possible Chair
Banking, Housing and Urban Affairs	Sherrod Brown (D-OH)
Commerce, Science and Transportation	Maria Cantwell (D-WA)
Finance	Ron Wyden (D-OR)
Health, Education, Labor and Pensions	Patty Murray (D-WA)
Homeland Security and Government Affairs	Gary Peters (D-MI)
Permanent Subcommittee on Investigations	Tom Carper (D-DE)
Judiciary	Dick Durbin (D-IL)

These committees have significant investigative powers, including the authority to issue subpoenas to compel the production of documents and witness testimony, giving incoming Democratic committee chairs significantly more leverage in compelling cooperation from private-sector investigative targets. It is important to note that, while all of these committees are empowered to issue subpoenas, last Congress only the Chair of the Permanent Subcommittee on Investigations (“PSI”) had the authority to issue a subpoena unilaterally, i.e., without securing Minority consent or a majority vote from the full Homeland Security and Government Affairs Committee. In other words, if the Senate adopts similar rules to last Congress, the Democratic Chair of PSI could theoretically issue investigative subpoenas on his or her own authority alone, whereas chairs of other committees would first have to obtain either agreement from that committee’s Republican leadership or hold a formal committee vote before sending a subpoena. Of course, companies and individuals generally respond to committee requests voluntarily, but the possibility of a subpoena certainly shapes interactions with committee staff and members.

With respect to potential oversight areas of focus, these committees will certainly spend time and resources overseeing the government agencies and organizations under their respective jurisdictions. Private sector entities also should expect to be targeted for investigations, whether directly or indirectly (as a witness or as part of an industrywide investigation). We expect Democrat-led Senate committees to be particularly interested in the following issues:

- **COVID-19** relief funding and government contracts (including recipients of CARES Act funds), vaccine and treatment development, distribution and pricing, and related pandemic response issues such as testing and PPE availability;
- **Energy and Environmental** issues such as combatting climate change and the impact of Trump Administration regulatory rollbacks on private sector practices;
- **Tech and Social Media** issues ranging from allegations of anticompetitive conduct, to content moderation, to Section 230 reform, and questions relating to privacy and the use of big data;
- **Healthcare** issues including drug pricing and e-cigarette manufacturer oversight;
- **Financial Services** issues, including increased enforcement by the Consumer Financial Protection Bureau (and the companies first spotlighted by that revival), developing fintech and crypto-asset businesses,



cybersecurity, student loans, housing market regulations, corporate dividends and share buy-backs, and any scandals that develop within the financial markets or consumer finance; and

- **Diversity and Inclusion** efforts, along with other environmental, social, and corporate governance (“ESG”) issues at companies across industries.

We expect the Senate and its committees to set their rules later this month, which will further dictate critical investigative tools and procedures. Companies and individuals who believe they may become the subject of investigative interest for the newly Democratic Senate and/or similar committees in the House, would be wise to stay abreast of these important issues and any changes in the 117<sup>th</sup> Congress. King & Spalding’s Congressional Investigations team will be tracking these developments closely.

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