



CRISIS PRACTICE

# Coronavirus

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For more information,  
contact:

Dan Donovan  
+1 202 661 7815  
[ddonovan@kslaw.com](mailto:ddonovan@kslaw.com)

William Clarkson  
+1 202 626 8997  
[wclarkson@kslaw.com](mailto:wclarkson@kslaw.com)

Kelli Gulite  
+1 202 626 2903  
[kgulite@kslaw.com](mailto:kgulite@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

## House Republicans Establish New Select Subcommittees Focused on Pandemic and “Weaponization of the Federal Government”

On January 9, 2023, the U.S. House of Representatives adopted its rules package<sup>1</sup> for the 118<sup>th</sup> Congress (“House Rules”) by a vote of 220 to 213. While much attention has been given to the provisions that would significantly limit the traditional power enjoyed by the Speaker of the House<sup>2</sup>, the House Rules contain a number of provisions that will shape the House Republicans’ oversight agenda and investigative priorities in the new Congress. Most notably, the House Rules and accompanying authorizing resolution establish two new select investigative subcommittees:

- The House Select Subcommittee on the Coronavirus Pandemic as a select investigative subcommittee of the Committee on Oversight and Accountability<sup>3</sup> (H. Res. 5 § 4(a)); and
- The House Select Subcommittee on the Weaponization of the Federal Government as a select investigative subcommittee of the Committee on the Judiciary (H. Res. 12).<sup>4</sup>

Republican leaders of key House committees, including incoming Judiciary Committee Chair Jim Jordan (R-OH) and Oversight and Accountability Chair James Comer (R-KY) have publicly stated that the Biden Administration will be their primary oversight target in the new Congress. However, private sector stakeholders should also anticipate being targeted for investigation, directly or collaterally. Last Congress, Rep. Comer launched multiple COVID-19 inquiries while serving as Ranking Member of the House Oversight and Reform Committee (now renamed “Oversight and Accountability”)<sup>5</sup>, including, for example, investigating research facilities and universities that participated in gain-of-function research.<sup>6</sup> In December 2022, former House Judiciary Committee Ranking Member Jordan sent letters to the leading technology



and social media companies requesting information about the “nature and extent of your companies’ collusion with the Biden Administration.”<sup>7</sup>

Although the select subcommittees are formally part of the House Oversight and Accountability and House Judiciary Committees, respectively, they have broad investigative functions and authorities that empower them to conduct active and aggressive oversight.

### THE HOUSE SELECT SUBCOMMITTEE ON THE CORONAVIRUS PANDEMIC

The House Select Subcommittee on the Coronavirus *Pandemic* is the Republican response to the “House Select Subcommittee on the Coronavirus *Crisis*” established by the Democratic majority in April 2020 during the pandemic (emphasis added). Pursuant to its authorizing resolution, the Democratic-led House Select Subcommittee on the Coronavirus Crisis issued its final report in December 2022.<sup>8</sup> Aside from his primary focus on the origins of COVID, incoming House Oversight and Accountability Committee Chairman Comer has announced other priorities, such as investigating technology and social media companies’ engagement with federal agencies in responding to the pandemic. In a December 27, 2022 tweet, Comer stated, “Big Tech shouldn't be in the business of hiding facts. Americans deserve the truth about the origins of COVID-19. It is our Constitutional duty to conduct oversight & thoroughly examine the facts so this type of risky research & bad behavior never happens again.”<sup>9</sup>

Under the House Rules, the new select subcommittee will have broad jurisdiction and resources, as detailed below, albeit somewhat more limited in comparison to its Democratic-led predecessor.<sup>10</sup> Nevertheless, private sector entities in particular should take note of the following Subcommittee functions and authorities:

- **Investigative Functions:** The Select Subcommittee is authorized and directed to investigate and report on:
  - Origins of the Coronavirus pandemic, including federal funding of gain-of-function research;
  - Waste, fraud, and abuse of taxpayer funds in pandemic relief programs;
  - Vaccine development and treatment; and
  - Executive branch policies and actions, including internal and external communications, related to the coronavirus pandemic.
- **Investigative Authorities:**
  - Subpoena Power: Unlike its Democratic-led predecessor in the last Congress, the Select Subcommittee does not have subpoena authority, only the full Committee may authorize and issue subpoenas.
  - Deposition Authority: Select Subcommittee counsel are authorized to conduct depositions without a Select Subcommittee Member present.
  - Witness Questioning: Generally, committee members are provided 5 minutes each to question hearing witnesses. Under the Select Subcommittee, however, the Chair may allow Select Subcommittee members to extend witness questioning beyond their allotted five minutes. Furthermore, the Select Subcommittee Chair may authorize staff to directly question witnesses.

### THE HOUSE SELECT SUBCOMMITTEE ON THE WEAPONIZATION OF THE FEDERAL GOVERNMENT

As noted above, the Select Subcommittee is formally part of the House Judiciary Committee to be chaired by Rep. Jordan, who will also serve as a Subcommittee Member. In addition to its broad investigative functions, the House Select Subcommittee is empowered with significant investigative authorities, beyond those of oversight committees, and its activities may collaterally impact private sector entities.<sup>11</sup> Distinguishing functions and authorities include:



- **Investigative Functions:** The Select Subcommittee is authorized and directed to investigate and report on executive branch laws, programs, and activities related to the collection of information on U.S. citizens, along with the “sources and methods used” and a particular focus on how executive branch agencies:
  - “work with, obtain information from, and provide information to the private sector, non-profit entities, or other government agencies to facilitate action against American citizens”; and
  - “collect, compile, analyze, use, or disseminate information about citizens of the United States”.
- **Investigative Authorities:**
  - Subpoena Power: The Select Subcommittee does not have subpoena authority, only the full Committee may authorize and issue subpoenas.
  - Ongoing Criminal Investigations: The Select Subcommittee’s investigative authority would extend to “ongoing criminal investigations”.
  - Access to Highly Classified Information: The Select Subcommittee is authorized to access information provided to the Permanent Select Committee on Intelligence.
  - Deposition Authority: Select Subcommittee counsel are authorized to conduct depositions without a Select Subcommittee Member present.
  - Witness Questioning: Generally, committee members are provided 5 minutes each to question hearing witnesses. Under the Select Subcommittee, however, the Chair may allow Select Subcommittee members to extend witness questioning beyond their allotted five minutes. Furthermore, the Select Subcommittee Chair may authorize staff to directly question witnesses. These changes could result in more aggressive cross-examination of witnesses.

## HOUSE DEMOCRATS SHIFT GEARS INTO MINORITY OVERSIGHT ROLE

While Democrats no longer wield the gavel in the House and have lost the broad investigative authorities enjoyed by the majority party, historically they have remained active and conducted effective oversight as the minority party. To counter Republican oversight, House Democratic committee leaders and individual members will continue to issue letters (and accompanying press releases) requesting voluntary cooperation with their inquiries or co-sign investigative letters with Senate Democrats, who retain the authority to compel information and testimony from private sector entities.

## CONCLUSION

The new Select Subcommittees are authorized to issue interim reports and provide legislative recommendations “as {{they}} may deem advisable,” and at the conclusion of the 118th Congress, they are required to issue final reports of their investigative findings to the House. Although the Subcommittees will “cease to exist” within 30 days of submitting their final investigative reports, they are not subject to periodic reporting deadlines or a specified end date. While these newly empowered subcommittees will play a leading oversight role in the 118<sup>th</sup> Congress, key House committees, such as Education & Workforce<sup>12</sup>, Energy & Commerce<sup>13</sup> and Ways & Means<sup>14</sup>, will also carry out oversight agendas within their jurisdictions.

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<sup>1</sup> H. Res. 5, 118th Cong. (2023), available [here](#).

<sup>2</sup> Katie Edmondson, *House Narrowly Approves Rules Amid Concerns About McCarthy's Concessions*, N.Y. TIMES (Jan. 9, 2023), available [here](#).

<sup>3</sup> Note that this is not a reauthorization of the Democratic-led Select Subcommittee on the Coronavirus Crisis, which concluded at the end of the 117<sup>th</sup> Congress. Rather, the newly adopted House Rules package establishes a separate investigative committee to review COVID-related issues.

<sup>4</sup> Annie Grayer, *House GOP select panel will target DOJ and FBI and their 'ongoing criminal investigations'*, CNN (Jan. 8, 2023), available [here](#).

<sup>5</sup> It has become increasingly common for the newly installed majority party to rename the principal House oversight committee. In recent history, the committee has been retitled: "House Oversight and Government Reform," "Committee on Government Reform," and "Committee on Oversight and Reform."

<sup>6</sup> *Comer & Jordan Demand Docs & Testimony on COVID Origins and U.S. Taxpayer Dollars Funneled to the Wuhan Lab*, U.S. House Committee on Oversight and Reform, Press Release (Dec. 14, 2022), available [here](#); *Comer, Oversight Republicans Probe the Biden Administration's COVID Test Contract with China*, U.S. House Committee on Oversight and Reform, Press Release (Oct. 20, 2022), available [here](#).

<sup>7</sup> *Jim Jordan Sends Demands to Big Tech Companies Ahead of 118th Congress*, U.S. House Judiciary Committee, Press Release, (Dec. 14, 2022), available [here](#).

<sup>8</sup> The former subcommittee's final report, which culminated two years of investigations, 42 hearings and public briefings, 37 staff reports, and 24 interviews, ultimately concluded that "the Trump Administration's failed leadership—along with corporate actors—undermined the nation's pandemic response."

<sup>9</sup> Rep. James Comer (@RepJamesComer), Twitter (Dec. 27, 2022 at 9:32 PM), available [here](#).

<sup>10</sup> Under its rules, the Chair of the Select Subcommittee on the Coronavirus Crisis had the authority to unilaterally authorize and issue subpoenas for documents and information. See H. Res. 935, § 4(a)(1).

<sup>11</sup> H. Res. 12, 118th Cong. (2023), available [here](#).

<sup>12</sup> Rep. Virginia Foxx (@virginiafoxx), Twitter (January 9, 2023 at 5:42 PM), available [here](#). ("I am deeply honored by the trust placed in me by my colleagues to chair a committee whose work touches the lives of every American...I will use my position to protect the rights of workers, job creators, students, and parents.")

<sup>13</sup> Rep. Cathy McMorris Rodgers, Facebook (Jan. 6, 2023), available [here](#). ("As the Chairwoman of the Energy and Commerce Committee, protecting technology users from privacy threats will continue to be a top priority. Whether it's Big Tech or a foreign government, no one should ever violate the privacy of you or your children.")

<sup>14</sup> *Smith Statement on Selection as Next Chairman of the House Ways and Means Committee*, Press Release (Jan. 9, 2023), available [here](#). ("We must also examine whether it is in the best interests of the American people to continue showering tax benefits on corporations that have shed their American identity in favor of a relationship with China.")