

ARTICLE

MAPPING MINORITY INVESTIGATIVE POWERS IN CONGRESS

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ABSTRACT

“Shut down the Senate . . .” “Roll over and play dead . . .” In the first hundred days of President Donald Trump’s second term, these were the rallying cries of two far ends of a debate among Democrats about how to respond to the administration’s unprecedented actions. This debate, which rages on today, has been marked by a lack of specificity about the various oversight tools available to members of the minority party in Congress, particularly when they investigate whether the Executive Branch is faithfully executing the laws Congress passes. Scholarship too has focused little on the full panoply of powers minority parties can use to conduct investigations, especially during periods of unified party government. This Article aims to fill these gaps by mapping the minority’s investigative powers in Congress.

This review demonstrates that the current all-or-nothing debate misses significant opportunities for minorities to conduct oversight through a continuum of powers that can be deployed selectively and strategically rather than as a binary choice between complete obstruction and total passivity. These minority oversight powers include rights provided in House and Senate rules and federal laws, as well as parliamentary procedures the minority can employ to gain leverage for its investigative aims. They also include investigative actions the minority can take that do not rely on these rules, including obtaining information from alternative sources and disseminating that information through minority reports and events. To better inform the current debate, this survey provides a host of precedents and illustrations drawn from actions taken in the past by congressional minorities of both political parties.

Based on this review, the Article concludes by offering several innovative proposals for minorities to consider, including moving beyond the current either-or debate in favor of a more strategic approach, organizing staff and resources to work more proactively across committees and both houses of Congress, increasing district and state-level engagement, and intentionally pursuing opportunities for bipartisanship. Unlike the two previous alternatives, which could allow congressional majorities to sacrifice their Article I prerogatives by either shutting down the Legislative Branch or abandoning its role as a check on the Executive Branch, these proposals could help minorities empower Congress as an institution to more effectively fulfill its constitutional role in our separation of powers framework.

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I. INTRODUCTION

In the first hundred days of President Donald Trump’s second term, Democrats erupted into an existential debate about how to respond to the incoming administration’s actions.¹ Reeling from the November elections in which Trump defeated Vice President Kamala Harris, Democrats were also contending with the reality of a unified Republican party government, with majorities in both houses of Congress and a supermajority of Supreme Court justices appointed by Republican presidents.² As the electoral autopsies began, Democrats struggled to cope with how far they had fallen.³

This debate took on greater urgency when an emboldened Trump rolled back into Washington with a plan for unprecedented upheaval at warp speed.⁴ Taking maximum advantage of his governing trifecta, President Trump and his administration openly flouted laws Congress previously passed

¹ See, e.g., Maeve Reston, *The Democratic Fight over How to Respond to Trump Has Already Begun*, WASH. POST (Mar. 6, 2025), <https://www.washingtonpost.com/politics/2025/03/05/democrats-trump-speech-reaction-debate/> [https://perma.cc/282A-JPQJ] (describing “a deepening rift within the Democratic Party over the most effective way to take on Trump”).

² See, e.g., Shane Goldmacher, *Powerless, Democrats Debate Just How Deep in the Wilderness They Are*, N.Y. TIMES (Jan. 31, 2025), <https://www.nytimes.com/2025/01/29/us/politics/democratic-party-rebuild.html> [https://perma.cc/6JLK-TSX4] (detailing “a fierce debate over how badly damaged the 2024 election left the party’s brand, a consequential internal argument that is already shaping early efforts to rebuild”).

³ See, e.g., Philip Elliott, Brian Bennett & Charlotte Alter, *The Democrats’ Blame Game Begins*, TIME (Nov. 6, 2024, at 15:47 ET), <https://time.com/7173550/how-kamala-harris-lost/> [https://perma.cc/M4R6-CBKE] (reporting on Democratic “soul-searching to determine what went so wrong in a landslide that saw the party lose ground with some of its most reliable constituencies”).

⁴ See Melissa Quinn, *How Trump’s Policies and Project 2025 Proposals Match Up After First 100 Days*, CBS NEWS (Apr. 29, 2025, at 10:09 ET), <https://www.cbsnews.com/news/trump-project-2025-first-100-days/> [https://perma.cc/LZ7X-26MF].

on a bipartisan basis,⁵ decimated long-standing administrative agencies,⁶ began firing and pushing out hundreds of thousands of federal employees,⁷ and froze funds Congress had appropriated for critical federal programs.⁸ During this Executive Branch blitzkrieg, Republican members of Congress were criticized for failing to investigate or challenge the administration's apparent violations of the law and dismantling of long-established norms, such as prosecutorial independence at the Justice Department.⁹ Many majority members seemed uninterested in safeguarding Congress's constitutional prerogatives and instead embraced the administration's actions, even as these actions appeared to undermine congressional authority.¹⁰

⁵ See, e.g., Chris McGreal, *Trump Condemned over 'Blatantly Illegal' Firings of Watchdog Chiefs*, THE GUARDIAN (Jan. 28, 2025, at 04:00 ET), <https://www.theguardian.com/us-news/2025/jan/28/trump-watchdog-firings-inspectors-general> [<https://perma.cc/WZ4J-T867>] (firing inspectors general in violation of statute); David A. Super, *Many Trump Administration Fiscal and Regulatory Actions Are Unlawful*, CTR. ON BUDGET & POL'Y PRIORITIES (Feb. 11, 2025) <https://www.cbpp.org/research/federal-budget/many-trump-administration-fiscal-and-regulatory-actions-are-unlawful> [<https://perma.cc/HQX4-7UVY>] (funding freezes, impoundments, and other actions); Philip Wallach, *Choosing Congressional Irrelevance*, AM. ENTER. INST. (Aug. 4, 2025), <https://www.aei.org/op-eds/choosing-congressional-irrelevance/> [<https://perma.cc/E8DE-HRKA>] (collecting examples).

⁶ See, e.g., Sara Cook, Camilla Schick & Graham Kates, *Trump Administration Takes Steps to Formally Shutter USAID*, CBS NEWS (Mar. 28, 2025, at 16:36 ET), <https://www.cbsnews.com/news/trump-administration-takes-steps-formally-shutter-usaid-doge/> [<https://perma.cc/S3M3-5TZU>]; Alana Semuels, *The Trump Administration Just Gutted U.S. Health Institutions. What Will That Mean for Americans?*, TIME (Apr. 1, 2025, at 15:33 ET), <https://time.com/7273450/trump-administration-gut-health-institutions/> [<https://perma.cc/3Q2K-KS35>].

⁷ See Elena Shao & Ashley Wu, *The Federal Work Force Cuts So Far, Agency by Agency*, N.Y. TIMES (May 12, 2025), <https://www.nytimes.com/interactive/2025/03/28/us/politics/trump-doge-federal-job-cuts.html> [<https://perma.cc/7E36-AWK9>]; *A Government in Chaos: Trump's First Year Back in Office*, P'SHIP FOR PUB. SERV. (Jan. 20, 2026), <https://ourpublicservice.org/publications/a-government-in-chaos-trumps-first-year-back-in-office/> [<https://perma.cc/KP7L-YXA4>] (reporting ouster of more than 320,000 federal employees, based on Office of Personnel Management data, through voluntary and involuntary mechanisms).

⁸ See, e.g., Anne Flaherty & Soo Youn, *White House Budget Office Suspends Federal Financial Aid Programs*, ABC NEWS (Jan. 28, 2025, at 00:06 ET), <https://abcnews.com/US/white-house-budget-office-suspends-federal-financial-aid/story?id=118167742> [<https://perma.cc/N46N-SU46>]; Aria Bendix, *Trump Administration Cut More Than \$1.8 Billion in NIH Grants*, NBC NEWS (May 8, 2025, at 11:36 ET), <https://www.nbcnews.com/health/health-news/trump-administration-cut-18-billion-nih-grants-rcna205568> [<https://perma.cc/3NLE-ZFNY>].

⁹ See Quinta Jurecic, *Trump's Attacks on Justice Department Independence, Then and Now*, LAWFARE (Mar. 27, 2025, at 10:27 ET), <https://www.lawfaremedia.org/article/trump-s-attacks-on-justice-department-independence--then-and-now> [<https://perma.cc/DDZ3-45V7>]; *Separation of Parties or Powers? Congress Seems Unwilling to Oversee a Rampant Executive*, HARV. KENNEDY SCH. OF GOV'T (Mar. 18, 2025), <https://www.hks.harvard.edu/faculty-research/policy-topics/democracy-governance/separation-parties-or-powers-congress-seems> [<https://perma.cc/7VP6-VRZ6>] (interview with Ben Schmeer); Scott Wong, Sahil Kapur & Ryan Nobles, *Republicans Take a Back Seat as Trump Steamrolls Congress with Flurry of Unilateral Moves*, NBC NEWS (Feb. 3, 2025, at 19:22 ET), <https://www.nbcnews.com/politics/congress/republicans-back-seat-trump-steamroll-congress-unilateral-moves-rcna190465> [<https://perma.cc/VN5Y-DXHW>].

¹⁰ See Carl Hulse & Catie Edmondson, *Under G.O.P., Congress Cedes Power to Trump, Eroding Its Influence*, N.Y. TIMES (Mar. 14, 2025), <https://www.nytimes.com/2025/03/14/us/politics/trump-republicans-congress-power.html> [<https://perma.cc/24HJ-KX8Q>].

With this backdrop, a deep fissure developed among Democrats and their supporters. Some warned that the country was facing a constitutional crisis like no other, arguing that Democrats should act as aggressively as possible to halt or delay the damage they believed the administration was causing to programs, services, and governing institutions.¹¹ Some called on Democrats to gum up the inner workings of the Legislative Branch and, for example, “shut down the Senate.”¹² Those on the other end of the spectrum urged Democrats to do exactly the opposite. They argued that the minority should not intervene at all for fear that it might backfire politically and instead should allow voters to experience the full damage of the administration’s actions, with the hope of retaking the House, Senate, or both in the next election. The most prominent of these voices was James Carville, who wrote in the *New York Times* just weeks after President Trump was inaugurated that Democrats should “roll over and play dead.”¹³ This was not an isolated view.¹⁴

Missing from this public debate, however, was specificity regarding the range of legal and political tools available to the minority and how these tools could be deployed in strategic ways. This was particularly true with respect to the minority’s power to conduct oversight of Executive Branch actions. Beyond making general references to filibustering legislation and promising to do everything in their power to check the Trump administration’s abuses,¹⁵ few members appeared to be gaming out more strategic approaches to investigating the President’s actions.

¹¹ Isabella Murray, ‘*This Is a Constitutional Crisis*’: Democrats Blast Musk and Trump over USAID, ABC NEWS (Feb. 3, 2025, at 20:28 ET), <https://abcnews.com/Politics/constitutional-crisis-democrats-blast-musk-trump-usaid/story?id=118413317> [<https://perma.cc/WB7W-BMZF>]; Elon Musk Tightens Grip on Federal Government as Democrats Raise Alarms, ASSOCIATED PRESS (Feb. 4, 2025, at 14:08 ET), <https://apnews.com/article/elon-musk-donald-trump-doge-21153a742fbad86284369bb173ec343c> [<https://perma.cc/ZY7N-9LDL>].

¹² *Indivisible on Trump’s Office of Management & Budget’s Memo: ‘This is a Revolution, Not a Memo.’*, INDIVISIBLE (Jan. 28, 2025), <https://indivisible.org/news/indivisible-trumps-office-management-budgets-memo-revolution-not-memo/> [<https://perma.cc/3QZZ-QJZN>].

¹³ James Carville, *It’s Time for a Daring Political Maneuver, Democrats*, N.Y. TIMES (Feb. 25, 2025), <https://www.nytimes.com/2025/02/25/opinion/democrats-trump-congress.html> [<https://perma.cc/VZ8G-AFKJ>] (“[T]here’s nothing Democrats can legitimately do to stop it, even if we wanted to.”).

¹⁴ See, e.g., Yasheng Huang, *To Win Back Voters, Democrats Should Let Trump Be Trump*, PROJECT SYNDICATE (Nov. 15, 2024), <https://www.project-syndicate.org/onpoint/let-maga-policies-play-out-most-effective-way-to-defeat-trump-by-yasheng-huang-2024-11> [<https://perma.cc/9N7G-ZYXJ>]. Although these were far ends of the spectrum, others, including House Minority Leader Hakeem Jeffries (D-N.Y.), took a middle-ground approach. He cautioned that because they were in the minority, Democrats had less power and fewer resources and should not “swing at every pitch.” Kevin Frey, ‘*Not Going to Swing at Every Pitch*’: Jeffries, Schumer Navigate How to Counter Trump 2.0, SPECTRUM NEWS (Jan. 31, 2025, at 22:09 ET), <https://ny1.com/nyc/all-boroughs/politics/2025/02/01/not-going-to-swing-at-every-pitch---jeffries--schumer-navigate-how-to-counter-trump-2-0> [<https://perma.cc/WJ7V-CS9D>].

¹⁵ See, e.g., Press Release, Rep. Terri Sewell (D-Ala.), Rep. Sewell Demands Answers from the IRS on Elon Musk’s Theft of Americans’ Private Information (Feb. 6, 2025), <https://sewell.house.gov/2025/2/rep-sewell-demands-answers-from-the-irs-on-elon-musk-s-theft-of-americans-private-information> [<https://perma.cc/6QQ4-ZDB6>] (promising to “do everything in our power to hold this Administration accountable for its reckless abuse of power”).

Similarly, legal and political science scholarship has had limited focus on the wide range of tools that congressional minorities have at their disposal to conduct investigations. First, separation of powers studies have focused predominantly on the dynamics of legislating.¹⁶ Scholars have theorized about the extent to which minority parties in Congress may affect the lawmaking process,¹⁷ and significant research has been conducted on the use of specific legislative procedures utilized by the minority, such as the filibuster.¹⁸ But there has been relatively little focus in separation of powers literature on the minority's power to conduct investigations. Second, scholarship that does examine Congress's investigative power has focused mainly on disputes between majorities in Congress and the Executive Branch, while focusing less on the minority's investigative powers.¹⁹ Although some scholars have examined specific minority rights, such as the motion to recommit,²⁰ few if any have focused on the minority's broad range of investigative powers as a whole.²¹

The goal of this Article is to contribute to both of these public and scholarly debates by mapping the minority's investigative powers in Congress. Surveying numerous oversight tools available to congressional minorities

¹⁶ See, e.g., Josh Chafetz, *The Chadha Presidency*, 115 GEO. L.J. (forthcoming 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5360131 [<https://perma.cc/4FFA-D3GW>] (analyzing Congress's failure to address Trump Administration abuses in context of Supreme Court's decision to invalidate legislative veto). See generally Nikolas Bowie & Daphna Renan, *Separation of Powers Counter-Revolution*, 131 YALE L.J. 2020 (2022) (proposing "republican" separation of powers theory of Legislative and Executive Branches defining their relationship through deliberation and compromise); Cass R. Sunstein & Adrian Vermeule, *The Unitary Executive: Past, Present, Future*, 2020 SUP. CT. REV. 83 (2020) (examining underpinnings of unitary executive theory).

¹⁷ See generally Andrew O. Ballard & James M. Curry, *Minority Party Capacity in Congress*, 115 AM. POL. SCI. REV. 1388 (2021); Jonathan S. Gould, *Law Within Congress*, 129 YALE L.J. 1946 (2020); James M. Curry & Frances E. Lee, *Non-Party Government: Bipartisan Lawmaking and Party Power in Congress*, 17 PERSPS. ON POL. 47 (2019); Daryl J. Levinson & Richard H. Pildes, *Separation of Parties, Not Powers*, 119 HARV. L. REV. 2312 (2006).

¹⁸ See, e.g., Jon R. Bond, *The Contemporary Presidency: Which Presidents Win More or Less Than Expected in Congress?*, 54 PRESIDENTIAL STUD. Q. 271, 273–76 (2024).

¹⁹ See, e.g., Jonathan David Shaub, *White House Inspection*, 103 WASH. U. L. REV. (forthcoming 2026) (proposing to resolve inter-branch disputes through independent non-prosecutorial entity with authority to compel information production); Emily Berman, *Recalibrating Interbranch Bargaining*, 66 WM. & MARY L. REV. 395 (2025) (proposing aggressive litigation and possible legislative fixes for inter-branch disputes); Claire Leavitt, "I'll Be the Oversight": *Lessons from the (First) Trump Era*, THE FORUM (2025) (examining effects of Trump era on congressional oversight); Todd David Peterson, *Arbitrating Executive Privilege*, 73 AM. U. L. REV. 217 (2023) (proposing arbitration approach for resolution of inter-branch disputes).

²⁰ See, e.g., Keith Krehbiel & Adam Meirowitz, *Minority Rights and Majority Power: Theoretical Consequences of Motion to Recommit*, 27 LEGIS. STUD. Q. 191 (2002); Jason M. Roberts, *Minority Rights and Majority Power: Conditional Party Government and the Motion to Recommit in the House*, 30 LEGIS. STUD. Q. 219 (May 2005).

²¹ Professor Josh Chafetz has repurposed international relations nomenclature of hard and soft powers to describe the range of tools available to Congress when interacting with the Executive Branch, and parallels may be drawn to majority-minority party dynamics in Congress. See generally JOSH CHAFETZ, *CONGRESS'S CONSTITUTION: LEGISLATIVE AUTHORITY AND THE SEPARATION OF POWERS* (2017). See also Saikrishna Bangalore Prakash, *Congress as Elephant*, 104 U. VA. L. REV. 797 (2018).

demonstrates that taking an all-or-nothing approach misses significant opportunities for the minority to effectively counter a unified party government. In short, the decision should not be viewed as binary, but rather as a continuum.

One audience for this analysis is lawmakers. To my knowledge, there has not been a comprehensive survey of minority investigative rights in Congress. This analysis is intended to spark more informed discussion about the full suite of oversight tools available to minority members and offer concrete proposals born of practical experience.²² The debate over Democrats' response to the Trump administration's actions has roiled well beyond President Trump's first hundred days.²³

Mapping the minority's investigative powers is also intended to answer calls from members of Congress, legal scholars, and political scientists for a more detailed study of Congress, legislative branch investigations, and minority rights in particular.²⁴ For example, although scholars have debated the causes of expanding or contracting minority rights, such studies have focused predominantly on inter-party dynamics within a single chamber.²⁵ This review expands the aperture to focus more broadly on minority investigative powers across the board as well as in the broader context of party incentives across branches. Parties completely locked out of power, as Democrats are today, can utilize these tools to help counter majority policies and fulfill their constitutional responsibilities.

To provide context for this review, I first analyze the constitutional and structural underpinnings of the minority's investigative powers. Part II

²² Many precedents and proposals in this review are drawn from my experience as a congressional investigator for more than twenty years, including on the majority and minority staff of the House's primary investigative body, the Committee on Oversight and Reform ("House Oversight Committee"). During that time, I served under nine different chairs and ranking members, allowing me to observe various approaches to exercising minority investigative powers.

²³ See, e.g., Patrick G. Eddington, *Just Shut It Down*, REPUBLIC SENTINEL (July 23, 2025), <https://www.therepublicsentinel.com/just-shut-it-down/> [<https://perma.cc/QJ7P-QHLV>]; Arlette Saenz, *Obama's Blunt Message for Democrats: 'Toughen Up,'* CNN (July 14, 2025, at 05:30 ET), <https://www.cnn.com/2025/07/14/politics/obama-democrats-message> [<https://perma.cc/4Y8F-FRYY>]. This debate continued with the Democratic National Committee declining to release the findings of its internal examination more than a year after the 2024 election. See Elena Schneider, *Democratic National Committee Blocks Release of its 2024 Election Autopsy*, POLITICO (Dec. 18, 2025, at 11:00 ET), <https://www.politico.com/news/2025/12/18/dnc-kills-its-own-public-2024-autopsy-00697403> [<https://perma.cc/87W8-N9VP>].

²⁴ See, e.g., Carl Levin & Elise J. Bean, *Defining Congressional Oversight and Measuring Its Effectiveness*, 64 WAYNE L. REV. 1, 17 (2018) (noting that "only limited research has been conducted" on effective congressional investigations); Jeffery A. Jenkins, Nathan W. Monroe & Tessa Provins, *Toward a Theory of Minority-Party Influence in the U.S. Congress: Whip Counts, Amendment Votes, and Minority Leverage in the House*, 43 CAMBRIDGE J. PUB. POL'Y 722, 724 (2023) (noting that "the extant literature does not offer a clear, unified way to think about [minority power] theoretically"); Gould, *supra* note 17, at 1952 (praising "growing body of work that opens the black box of *how Congress operates*") (emphasis in original); Prakash, *supra* note 21, at 798–99 (noting that Congress as a whole "seldom is an object of constitutional exploration").

²⁵ See *infra* Part V.B.

examines Congress's investigative authorities under the Constitution, House and Senate rules and organizing structures, judicial distinctions between voluntary and mandatory fact-gathering, and the debate surrounding the constitutional authority of individual members of Congress to conduct investigations.

Part III then establishes a framework for assessing minority investigative powers. I examine three categories of rule-based rights the minority may invoke to conduct investigations based on the sources of their authority and usage: (A) unicameral rules passed by the House or Senate relating directly to investigative functions; (B) laws enacted by Congress granting rights to certain information; and (C) more general parliamentary provisions that minority members can use as leverage for their investigative objectives.

Beyond rights granted explicitly by House or Senate rules or by laws passed by Congress, minority members can also exercise broader political powers that are neither reliant on nor bound by these technical provisions. To this end, Part IV sets forth additional actions the minority can take beyond these rules and laws, including creative efforts to collect information from a range of public and non-public sources and disseminate that information in compelling ways. In addition to categorizing minority investigative powers in this way, I highlight throughout the Article some of the benefits and challenges with each approach and provide illustrative precedents drawn from past congressional minorities of both political parties.

Finally, in Part V, I offer several proposals for minorities based on this review. First is to move beyond the current all-or-nothing debate. To date, the discussion has been framed as an either-or choice between shutting down government (as a way to mitigate perceived harms) or rolling over (as a way to safeguard future electoral prospects). But the minority could serve both goals by deploying existing oversight tools more strategically. Although minority members have significantly fewer powers than the majority, they do have options. They could use these tools in combination or in succession, in coordinated approaches across committees, and in ways that some majority members support. Moreover, utilizing extant investigative tools that enjoy longtime political legitimacy may avoid more heightened electoral backlash than, for example, shutting down the government. Having a consolidated survey of these powers with examples of how they have been used may assist current and future minorities to develop unique, customized approaches to their investigative aims.

Second, the minority could mount a more effective opposition by coordinating resources in innovative ways to transcend Congress's siloed organizational structures. The review below demonstrates that the current majority in Congress is now engaged in one of the most accelerated trends in a generation to curtail minority rights.²⁶ Previous theories suggesting that majorities are

²⁶ See also Dave Rapallo, *The Accelerating Assault on Minority Rights in Congress*, HARV. J. ON LEGIS.: MARKUP (Nov. 3, 2025), <https://journals.law.harvard.edu/jol/2025/11/03/the-accelerating-assault-on-minority-rights-in-congress/> [<https://perma.cc/B25K-63LK>] (describing this trend).

incentivized to retain minority rights because the shoe eventually could be on the other foot largely have given way to decades of successive majorities racing to cut off minority rights at increasing rates.²⁷ This negative spiral—especially pronounced with unified party government—has detrimental effects not only for the minority, but also for Congress as an institution. By eschewing robust oversight and restricting minority powers, the majority degrades the Legislative Branch’s capacity to fulfill one of its core constitutional duties: gathering information to ensure that the President and executive agencies are faithfully executing the law as Congress intends.²⁸ It also exacerbates a decades-long effort by the Executive Branch to aggrandize power at the expense of Congress.²⁹ Recognizing this trend, the minority could move beyond existing institutional stovepipes by coordinating their resources in new ways. It could cordon off staff to focus on proactive rather than defensive efforts, combine minority forces to collaborate across committees and even Capitol Hill, and generate minority work product that drives its own agenda more intentionally.

Third, to maximize these efforts to bypass existing institutional structures, which tend to divide and confine, minority members could move beyond Capitol Hill to better connect the results of their proactive work to their local constituencies. To illustrate how this proposal could function in practice, I highlight the work of Representative Henry Waxman (D-Cal.) who, while in the minority, used innovative information gathering practices to generate hundreds of district level reports for members of the House and Senate to highlight findings and communicate their priorities to their constituents.³⁰ By replicating and coordinating this model across committees of both houses, the minority could expand its reach and impact exponentially.

Finally, although solving the intractable problem of escalating hyper-partisanship is beyond the scope of this Article, I conclude by offering several modest suggestions for the minority to fulfill its investigative objectives while fostering opportunities for bipartisanship. These proposals can be entirely consistent with the minority’s larger objectives of mitigating harm

²⁷ See SARAH A. BINDER, *MINORITY RIGHTS, MAJORITY RULE 203–04* (1997) (proposing partisan procedural choice theory in which rule changes are motivated primarily by short-term political advantage rather than institutional concerns, such as increased workload); FRANCES E. LEE, *INSECURE MAJORITIES: CONGRESS AND THE PERPETUAL CAMPAIGN 7–12, 19* (2016) (distinguishing previous scholarship and documenting the rise of party competition in contemporary era); see also *infra* Part V.B.

²⁸ See, e.g., Julia Azari, *Can Trump’s Unprecedented Power Consolidation Last?*, GOOD POL./BAD POL. (July 25, 2025), <https://goodpoliticsbadpolitics.substack.com/p/can-trumps-unprecedented-power-consolidation> [https://perma.cc/8PAP-WW4D] (arguing that part of the majority’s “coalitional glue” is “an appetite for consolidating power, especially executive power”).

²⁹ See, e.g., Berman, *supra* note 19, at 403–28 (tracing Executive Branch efforts over several decades to develop legal doctrines to aggrandize power in informational disputes with Congress); Jonathan David Shaub, *The Executive’s Privilege*, 70 DUKE L.J. 1, 69–70 (2020) (describing development of absolute and prophylactic assertions of executive privilege to counter congressional oversight).

³⁰ See *infra* Part V.C.

and enhancing electoral prospects and do not prevent the minority from taking principled stands when called for.

II. BACKGROUND ON POWERS OF INDIVIDUAL MEMBERS OF CONGRESS

Before surveying oversight tools available to the minority, I provide an overview in this Part of the constitutional provisions relating to Congress's investigative authorities. I also examine the importance of committees and political parties in the House and Senate, the legal and practical distinctions between voluntary and compulsory fact-gathering powers, and the inter-branch debate over whether individual members have constitutional authority to engage in oversight. Understanding these constitutional, legal, and functional foundations can assist in evaluating the potential effectiveness and likelihood of success in deploying the various investigative powers discussed in Parts III and IV.

A. Constitutional Authorities

The Constitution vests “[a]ll legislative Powers herein granted” in Congress.³¹ From its first days, Congress has insisted on its right to obtain information from the Executive Branch and private individuals when doing so is pertinent to the fulfillment of its constitutional responsibilities.³² Congress asserts its fact-finding authorities not only to inform legislation, but also to assess proposals for reform, oversee the operations of the other branches, monitor the expenditure of funds, remove Executive and Judicial Branch officers, combat waste, fraud, and abuse, and for many other purposes.³³ Congress also seeks information from, and about, other branches to safeguard its own role in the Constitution's system of checks and balances.³⁴ In addition

³¹ U.S. CONST. art. I, § 1.

³² See, e.g., 2 ANNALS OF CONG. 1514–15 (1790) (describing House debate to establish select committee to investigate Robert Morris, Superintendent of Finance under Articles of Confederation, during which James Madison reportedly argued with success that the House “should possess itself of the fullest information in order to do[] justice to the country and to public officers”); LOUIS FISHER, CONG. RSCH. SERV., RL30966, CONGRESSIONAL ACCESS TO EXECUTIVE BRANCH INFORMATION: LEGISLATIVE TOOLS 2–3 (2001).

³³ See BEN WILHELM, TODD GARVEY, & CHRISTOPHER M. DAVIS, CONG. RSCH. SERV., RL30240, CONGRESSIONAL OVERSIGHT MANUAL 4–8 (2022 ed.). This publication by Congress's research arm was developed after a bipartisan request from House leadership in 1978 and is updated regularly with new information on congressional precedents, Executive Branch actions, and judicial rulings. See *id.* at ii.

³⁴ See *id.* at 4–5 (noting that “Congress's oversight role is also significant because it shines the spotlight of public attention on critical issues”) (first citing WOODROW WILSON, CONGRESSIONAL GOVERNMENT 303 (1885) (emphasizing that the “informing function should be preferred even to its legislative function”); and then citing Josh Chafetz, *Congressional Overspeech*, 89 FORDHAM L. REV. 529, 596 (2020) (describing Congress's use of oversight tools not only to inform itself but also “as a means to communicate with the public” and “compete with the other branches for public support and, therefore, for power”).

to informing themselves, members conduct investigations to inform their constituents about the functioning of their government.³⁵

The Supreme Court has confirmed repeatedly that Congress’s investigative power is inherent in, and indispensable to, the functions of the Legislative Branch.³⁶ This authority is “broad” and “encompasses inquiries into the administration of existing laws, studies of proposed laws, and ‘surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them.’”³⁷ This authority is not unlimited. In addition to being subject to countervailing constitutional interests, Congress’s inquiries must serve a valid legislative branch purpose.³⁸ The test for determining the validity of congressional demands for information is not whether they inform a specific bill or resolution, which would be overly narrow, but whether they serve *any* legislative branch function under the Constitution, which is a much broader standard.³⁹ The Court has recognized other limitations as well, as when questions propounded to witnesses are not pertinent to an investigation or when investigative steps are beyond the authorization granted to a committee.⁴⁰

The foundational authority of each member of Congress to cast an informed vote is critical to the functioning of the House and Senate as components of the Legislative Branch.⁴¹ The Constitution envisions that a majority vote will carry the day for many Legislative Branch actions, such

³⁵ See *id.* at 4 (“Congress’s oversight role is also significant because it shines the spotlight of public attention on critical issues, which helps both lawmakers and the general public to make informed judgments about executive performance.”). Each individual member also enjoys immunity granted by the Speech or Debate Clause from criminal prosecution or civil liability that otherwise might stem from speech or other acts taken within the legislative sphere. See U.S. CONST. art. I, § 6, cl. 2; *Eastland v. U.S. Servicemen’s Fund*, 421 U.S. 491, 501 (1975).

³⁶ *Trump v. Mazars USA, LLP*, 591 U.S. 848, 862 (2020) (also noting that the “power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function” and that “[w]ithout information, Congress would be shooting in the dark, unable to legislate ‘wisely or effectively’”) (quoting *McGrain v. Daugherty*, 273 U.S. 135, 174–75 (1927)).

³⁷ *Id.* (quoting *Watkins v. United States*, 354 U.S. 178, 187 (1957)).

³⁸ See *id.* at 863 (first citing *Watkins*, 354 U.S. at 187; then citing *Quinn v. United States*, 349 U.S. 155, 161 (1955)).

³⁹ David Rapallo, *House Rules: Congress and the Attorney-Client Privilege*, 100 WASH. U. L. REV. 455, 460 (2022) (noting that instead of using the shorthand “valid legislative purpose,” the more precise framing is whether a congressional investigative demand serves a “valid legislative *branch* purpose”) (emphasis in original); see also *Mazars*, 591 U.S. at 862–63 (upholding Congress’s investigative powers that relate to “a legitimate task of the Congress”) (citing *Watkins*, 354 U.S. at 187).

⁴⁰ See *Watkins*, 354 U.S. at 206 (noting that pertinency is determined by reference to resolution authorizing investigation); *United States v. Rumely*, 345 U.S. 41, 42, 44 (1953).

⁴¹ Unlike most Executive Branch employees, each member of Congress is “an officer of the union, deriving his powers and qualifications from the constitution.” *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 799 (1995) (quoting 1 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 627 (3d ed. 1858)); Annie L. Owens, *Thwarting the Separation of Powers in Interbranch Information Disputes*, 130 YALE L.J. F. 494, 502 (2021), <https://yale-lawjournal.org/article/thwarting-the-separation-of-powers> [<https://perma.cc/DW9H-KTNZ>].

as the House and Senate choosing their respective officers⁴² and passing ordinary legislation.⁴³ However, it does not require a majority vote in all cases, and several provisions require higher or lower thresholds depending on their significance.⁴⁴

Individual members regularly seek information and conduct oversight to fulfill their constitutional responsibilities to the nation. In addition to informing their positions and votes on legislation, each member has representational responsibilities to the constituents of their states or districts.⁴⁵ Fact-finding can be critical for casework—assisting constituents with agency programs, grants, or contracts—and conducting this casework in turn may provide members with information to reform the operations and policies of federal bureaucracies.⁴⁶ These duties are typically served through a back-and-forth process of members seeking information regarding how funding and programs are affecting their communities, providing information to constituents regarding information they obtain, and soliciting input to inform proposals for reform.⁴⁷

B. House and Senate Organization

The Constitution makes no reference to committees or political parties but instead grants each house authority to set its own rules and organize internally.⁴⁸ Both the House and Senate have passed rules that create committees with defined jurisdictions.⁴⁹ Although the Founders may have envisioned a government beyond political parties, the two-party system is now embedded in the structures of Congress.⁵⁰ As just one example, both the House and

⁴² U.S. CONST. art. I, § 2, cl. 5 (establishing officer selection for House); *id.* art. I, § 3, cl. 5 (establishing officer selection for Senate).

⁴³ *See id.* art. I, § 5, cl. 1 (providing that “a majority of each [legislative body] shall constitute a quorum to do business; but a smaller number may adjourn from day to day”).

⁴⁴ The standard is two-thirds to expel a member, *id.* art. I, § 5, cl. 2, to override a presidential veto, *id.* art. I, § 7, cl. 2–3, and to convict an official in the Senate after impeachment by the House, *id.* art. I, § 3, cl. 6. Only one-fifth of members present is necessary to log “the yeas and nays of the members of either House on any question.” *Id.* art. I, § 5, cl. 3.

⁴⁵ For a summary of these functions from the perspective of Congress, see Brief for 35 Members of Congress as Amici Curiae in Support of Respondents at 6–12, *Dep’t of State v. Muñoz*, 602 U.S. 899 (2024) (No. 23-334).

⁴⁶ WILHELM ET AL., *supra* note 33, at 15; *see also* Lindsey Gailmard, Daniel E. Ho & Mark S. Krass, *Congressional Intervention in Agency Adjudication: The Case of Veterans’ Appeals*, 134 YALE L.J. 2461, 2489–95 (2025) (discussing scholarship linking constituency service to representation).

⁴⁷ SARAH J. ECKMAN, CONG. RSCH. SERV., R44726, CONSTITUENT SERVICES: OVERVIEW AND RESOURCES 1 (2025) (“You learn more about the job by doing constituent service work than anything else. . . . It tells you whether or not the legislation is doing what it is supposed to do.”) (quoting former House member in John R. Hibbing, *Voluntary Retirement from the U.S. House*, 7 LEGIS. STUD. Q. 57, 62 (1982)).

⁴⁸ U.S. CONST. art. I, § 5, cl. 2.

⁴⁹ *See* RULES OF THE HOUSE OF REPRESENTATIVES, R. X, H.R. DOC. NO. 118-187, at 463–577 (2025); STANDING RULES OF THE SENATE, R. XXV, S. DOC. NO. 113-18, at 19–31 (2013).

⁵⁰ Levinson & Pildes, *supra* note 17, at 2329.

Senate have chosen to base committee membership on party affiliation, with the majority party almost always having more members than the minority party on any committee.

Each party also has political organizations inside the House and Senate made up of members of their own parties and other parties who align with their interests. In addition to electing leaders, each party organization adopts its own rules.⁵¹ They have also established party organization “committees” that are distinct from congressional committees, including “steering” committees that decide on members’ congressional committee assignments and recommend candidates for leadership posts and “policy” committees that coordinate positions and messaging on legislation and other matters.⁵²

Standing within, and allegiance to, one’s political party has a direct impact on a member’s official responsibilities. For example, at the beginning of each Congress, members request committee assignments, which are made by party organizations and adopted through resolutions.⁵³ In the House, party affiliation is so central to its operations that switching parties results in the automatic withdrawal of a member’s committee assignments under House rules.⁵⁴ In contrast, senators who have switched parties after negotiations sometimes retained current positions or were rewarded with new ones.⁵⁵

Each house has authority to conduct investigations as a body.⁵⁶ The most common method of inquiry, however, is an investigation by a committee or subcommittee on a matter within its jurisdiction.⁵⁷ Committee inquiries are not

⁵¹ HOUSE REPUBLICAN CONF., CONFERENCE RESOLUTION: RULES OF THE HOUSE REPUBLICAN CONFERENCE, 119TH CONGRESS (2025); HOUSE DEMOCRATIC CAUCUS, RULES OF THE DEMOCRATIC CAUCUS, 119TH CONGRESS (2024); SENATE REPUBLICAN CONF., HISTORY, RULES, AND PRECEDENTS OF THE SENATE REPUBLICAN CONFERENCE, 119TH CONGRESS (UNDATED); SENATE DEMOCRATIC CAUCUS, RULES FOR THE DEMOCRATIC CONFERENCE (2022).

⁵² See Michael H. Crespin, Anthony Madonna, Joel Sievert & Nathaniel Ament-Stone, *The Establishment of Party Policy Committees in the U.S. Senate: Coordination, Not Coercion*, 96 SOC. SCI. Q. 34 (2015). These steering and policy functions are sometimes separate and sometimes joined, and they evolve over time. For example, Republicans in both the House and Senate have separate Steering Committees and Policy Committees, while House Democrats have a single Steering and Policy Committee. Senate Democrats have had multiple iterations, from separate Steering and Policy Committees to a Democratic Policy and Communications Committee, to a combined Democratic Steering and Policy Committee with an offshoot called the Democratic Strategic Communications Committee.

⁵³ RULES OF THE HOUSE OF REPRESENTATIVES, R. X(5)(a)(1), H.R. DOC. NO. 118-187, at 534–35; STANDING RULES OF THE SENATE, R. XXIV(1), S. DOC. NO. 113-18, at 19; H.R. RES. 5, 119th Cong. (2025); S. RES. 16, 119th Cong. (2025).

⁵⁴ RULES OF THE HOUSE OF REPRESENTATIVES, R. X(5)(b)(1), H.R. DOC. NO. 118-187, at 538–39 (2025).

⁵⁵ See, e.g., Kathleen Hunter & Bart Jansen, *Specter Switches Parties in Preparation for 2010 Campaign*, CQ (Apr. 28, 2009), <https://www.commonwealthfund.org/publications/newsletter-article/specter-switches-parties-preparation-2010-campaign> [<https://perma.cc/N2EU-9ES7>]; Paul Kane, *How Jim Jeffords Single-Handedly Bent the Arc of Politics*, WASH. POST (Aug. 18, 2014), <https://www.washingtonpost.com/news/the-fix/wp/2014/08/18/how-jim-jeffords-single-handedly-bent-the-arc-of-politics/> [<https://perma.cc/S33W-KDRX>].

⁵⁶ See, e.g., *infra* Part III.A.4 (discussing the Motion for Resolution of Inquiry).

⁵⁷ See WILHELM ET AL., *supra* note 33, at 14.

the only types of investigations authorized by House or Senate rules. Members of the House and Senate can work jointly through bicameral committees,⁵⁸ temporary House-Senate commissions,⁵⁹ conference committees for specific legislation,⁶⁰ or more ad hoc House-Senate collaborations.⁶¹ Congress has also granted investigative authorities to non-member entities, including the Government Accountability Office (“GAO”) and the Congressional Research Service (“CRS”), which have authority to collect information from federal agencies to conduct reviews of Executive Branch programs.⁶²

Individual members may pursue oversight efforts using staff and funding provided for their personal or district offices.⁶³ In addition, the top minority member on each committee, referred to as the “ranking member” or “ranking minority member,” can use minority committee staff and funding to conduct inquiries, report on findings, and inform legislative and other proposals.⁶⁴ Each party’s leadership also receives funding to support their parallel party organizations, which may include staffing, access to congressional offices and facilities, websites and other communications resources, and the ability to hold public events.⁶⁵

In addition to the rights the Constitution grants to all members, House and Senate rules grant individual members rights to participate on the floor and in committees.⁶⁶ As discussed in more detail in Part III, members have the right to make motions, debate, and cast votes that may result in legislative action or block such action.⁶⁷ These rights ensure that minority party

⁵⁸ See, e.g., 15 U.S.C. § 1024 (establishing Joint Economic Committee).

⁵⁹ See, e.g., Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136 (2020), 134 Stat. 281 (establishing Congressional Oversight Commission).

⁶⁰ See, e.g., VALERIE HEITSHUSEN & BRENDAN MCGARRY, CONG. RSCH. SERV., IF10515, DEFENSE PRIMER: THE NDAA PROCESS 2 (2025) (explaining NDAA conference committee procedure).

⁶¹ See, e.g., *The Senate and House Great Lake Task Forces*, NORTHEAST-MIDWEST INST., <https://www.nemw.org/policy-outreach/great-lakes-task-forces/> [<https://perma.cc/WM2G-CRQA>] (last visited Jan. 31, 2026).

⁶² See *infra* Part III.B.2 (discussing GAO requests); 2 U.S.C. § 166(d)(1) (providing that federal agencies “shall comply” with records requests from CRS).

⁶³ See, e.g., Legislative Branch Appropriations Act, 2024, Pub. L. No. 118-47, div. E, 138 Stat. 709.

⁶⁴ See *id.*

⁶⁵ See *id.*

⁶⁶ See TODD GARVEY, CONG. RSCH. SERV., LSB11376, LEGAL SIDEBAR: SITE VISITS, INFORMATION GATHERING, AND OVERSIGHT BY MEMBERS OF CONGRESS 3 (2025) (“Each individual Member therefore participates in the exercise of Congress’s legislative and investigative powers. It would appear that the same can be said for the exercise of committee power: though investigative jurisdiction and authorities have been delegated to committees, each Member of the committee shares in that power.”).

⁶⁷ See STANDING RULES OF THE SENATE, R. XII, S. DOC. NO. 113-18, at 10 (2013) (covering voting); *id.*, R. XV, S. DOC. NO. 113-18, at 13–14 (motions); *id.*, R. XIX, S. DOC. NO. 113-18, at 18–19 (debate); *id.*, R. XXVI, S. DOC. NO. 113-18, at 51–52 (committee procedure); RULES OF THE HOUSE OF REPRESENTATIVES, R. XI, H.R. DOC. NO. 118-187, at 577–650 (committee procedure); *id.*, R. XVI, H.R. DOC. NO. 118-187, at 735–92 (motions); *id.*, R. XVII, H.R. DOC. NO. 118-187, at 792–825 (debate); *id.*, R. XX, H.R. DOC. NO. 118-187, at 870–901 (voting).

members, although less likely to prevail in most instances, may engage in these processes and perhaps convince enough majority members to join them in affecting the outcome.⁶⁸

In conducting investigations, Congress generally seeks two broad categories of information: records and witness accounts.⁶⁹ Records may include documents created in the past, such as emails, letters, or memoranda, or new documents created for the purpose of informing Congress, such as annual or semi-annual reports prepared by agencies.⁷⁰ Witness accounts may be conveyed in formal proceedings, as in official testimony at public hearings, sworn depositions, and transcribed interviews, as well as in more informal settings, such as briefings, roundtable discussions, or private meetings.⁷¹

C. Voluntary Versus Compulsory Information Gathering

Most information sought by Congress is provided voluntarily.⁷² Traditionally, the Executive Branch has answered inquiries from all members of Congress, and federal agencies have routinely provided information about programs and funding spent in their districts and states.⁷³ Private sector and corporate entities also regularly provide information without subpoenas in response to queries about their activities.⁷⁴ Despite their high-profile attention

⁶⁸ See, e.g., 163 CONG. REC. S4415 (daily ed. July 27, 2017) (Sen. John McCain (R-Ariz.) casting deciding vote in unsuccessful 49 to 51 effort by Republicans to eliminate Affordable Care Act); Susan Davis & Domenico Montanaro, *McCain Votes No, Dealing Potential Death Blow to Republican Health Care Efforts*, NPR (July 27, 2017, at 23:46 ET), <https://www.npr.org/2017/07/27/539907467/senate-careens-toward-high-drama-midnight-health-care-vote> [<https://perma.cc/B5HH-VFWH>].

⁶⁹ A typical subpoena from Congress includes boxes that are checked when a recipient is required to produce items listed in an attached schedule or appear in person to testify. See, e.g., Subpoena from H. Comm. on Oversight & Accountability to Melanie Anne Egorin, Assistant Sec’y for Legis., Dep’t of Health & Hum. Servs. (Nov. 2, 2023), <https://oversight.house.gov/wp-content/uploads/2023/11/11.02.23-Egorin-Subpoena-.pdf> [<https://perma.cc/59F5-GVK6>]. These categories generally parallel judicial subpoenas *duces tecum* for documents, books, records, or other evidence and subpoenas *ad testificandum* for witnesses to testify at depositions or hearings. See FED. R. CIV. P. 45 advisory committee notes on rules—1937.

⁷⁰ See *infra* Part III.B.4.

⁷¹ See generally VALERIE HEITSHUSEN, CONG. RSCH. SERV., 98-336, SENATE COMMITTEE HEARINGS: ARRANGING WITNESSES (2017); CHRISTOPHER M. DAVIS, CONG. RSCH. SERV., 98-304, HOUSE COMMITTEE HEARINGS: ARRANGING WITNESSES (2015).

⁷² See TODD GARVEY, CONG. RSCH. SERV., R45653, CONGRESSIONAL SUBPOENAS: ENFORCING EXECUTIVE BRANCH COMPLIANCE 1 (2019) (stating that “executive branch officials comply with most congressional requests for information”).

⁷³ See, e.g., *Hearing on Compliance with Committee Oversight: Hearing Before the Subcomm. on Responsiveness and Accountability to Oversight of the H. Comm. on the Judiciary*, 118th Cong. 2 (2023) (statement of Assistant Att’y Gen. for Legis. Affs. Carlos Felipe Uriarte) (“Department officials and subject matter experts communicate with Members and staff nearly every week, if not every day, to provide detailed briefings about our programs and operations.”).

⁷⁴ See, e.g., STAFF OF H. COMM. ON OVERSIGHT & REFORM, 117TH CONG., DRUG PRICING INVESTIGATION 1, 5 (2021) (summarizing two-year investigation and 1.5 million pages of non-public documents obtained without subpoenas).

in the press, congressional subpoenas are relatively rare,⁷⁵ and examples of individuals being held in contempt after failing to comply with subpoenas are even less frequent.⁷⁶ When information is not produced voluntarily, a member of Congress may seek to compel its production. Broadly speaking, this could occur through rule-based enforcement mechanisms, such as subpoenas, or by applying political pressure generated by withholding cooperation on other matters or ramping up pressure in other ways. Although I discuss many of these options in Parts III and IV below, it is helpful first to briefly describe Congress's rules governing the issuance of subpoenas.

Pursuant to their constitutional rulemaking authority, the House and Senate have adopted rules that authorize subpoenas to require recipients to produce records or testimony through compulsory means. Generally, subpoenas may be authorized in two ways. The traditional manner is for a committee or subcommittee to consider a subpoena motion, debate its merits, offer amendments if necessary, and vote on whether to approve it.⁷⁷ After a successful subpoena vote, the committee chair or designee must sign and serve it, at which point it becomes legally binding on the recipient.⁷⁸ This is the case even if the chair personally voted to oppose a subpoena. In addition, members have the right to call a "special meeting" of a committee for the purpose of considering agenda items—including subpoenas—without the chair's permission or consent, provided a majority of committee members supports the effort.⁷⁹

More recently, an alternative method of issuing subpoenas evolved to allow committees to authorize their chairs to issue subpoenas with no debate or vote.⁸⁰ When Republicans came to power in the House in 1995, they authorized the Chairman of the House Oversight Committee, Representative Dan Burton (R-Ind.), to issue subpoenas unilaterally.⁸¹ This was a change from the practice since the McCarthy era in which subpoenas had been issued only with the agreement of the ranking member or after a debate and vote in which

⁷⁵ See GARVEY, *supra* note 72, at 2 n.15 (citing Neal Devins, *Congressional Executive Information Access Disputes: A Modest Proposal—Do Nothing*, 48 ADMIN. L. REV. 109, 114 (1996)).

⁷⁶ See Rapallo, *supra* note 39, at 490 (compiling sources showing 23 House or Senate floor votes for contempt from 1980 to 2022).

⁷⁷ See RULES OF THE HOUSE OF REPRESENTATIVES, R. XI(2)(m), H.R. DOC. NO. 118-187, at 608–09 (2025); STANDING RULES OF THE SENATE, R. XXVI(1); S. DOC. NO. 113-18, at 31 (2013).

⁷⁸ RULES OF THE HOUSE OF REPRESENTATIVES, R. XI(2)(m), H.R. DOC. NO. 118-187, at 608–11. The Senate does not include a similar explicit requirement in its rules.

⁷⁹ *Id.*, R. XI(2)(c)(2), H.R. DOC. NO. 118-187, at 585–86; STANDING RULES OF THE SENATE, R. XXVI(3), S. DOC. NO. 113-18, at 31–32.

⁸⁰ RULES OF THE HOUSE OF REPRESENTATIVES, R. XI(2)(m)(3), H.R. DOC. NO. 118-187, at 608–11. The Senate's rules do not include a provision explicitly addressing committees authorizing chairs to issue unilateral subpoenas, so the process has been a matter of committee history and practice pursuant to the general subpoena authority in Senate Rule XXVI. See STANDING RULES OF THE SENATE, R. XXVI(1), S. DOC. NO. 113-18, at 31.

⁸¹ See David Rapallo, *Congress's Power to Investigate Crime: Did Trump Kill Kilbourn?*, 27 N.Y.U. J. LEGIS. & PUB. POL'Y 135, 204 (2024).

all committee members could participate.⁸² Chairman Burton was the subject of widespread criticism after he famously issued more than 1,000 unilateral subpoenas that focused overwhelmingly on Democratic party and government officials, but this unilateral subpoena authority nevertheless spread to other House committees and to some, but not all, Senate committees.⁸³

Importantly, when the House and Senate authorized committee chairs to issue unilateral subpoenas, they did not remove the traditional mode of adopting subpoenas through deliberation and voting. Regardless of which method is used, a subpoena has the force of law after it is authorized and served in compliance with these procedures.⁸⁴ If a recipient continues to defy a subpoena, the House or Senate may seek to enforce it through the criminal contempt statute, which provides that, after a vote of the House or Senate, the U.S. Attorney for the District of Columbia shall bring the matter before a grand jury.⁸⁵ The House or Senate also may authorize civil suits that do not rely on federal prosecutors but, like criminal contempt actions, generally require the support of the majority party.⁸⁶ Apart from these contempt

⁸² *See id.*

⁸³ *See id.*; *see also* JANE HUDIBURG, CONG. RSCH. SERV., R44247, A SURVEY OF HOUSE AND SENATE COMMITTEE RULES ON SUBPOENAS (2021). *Compare* S. COMM. ON HOMELAND SEC. & GOV'TL AFFS., 118TH CONG., RULES OF PROCEDURE, R. 5(C), S. DOC. NO. 118-4, at 145 (2023) (granting chair unilateral subpoena authority), *with* S. COMM. ON HEALTH, EDUC., LABOR & PENSIONS, 116TH CONG., RULES OF PROCEDURE, R. 17(C), S. DOC. NO. 116-6, at 126–27 (2019) (authorizing committee votes to grant unilateral subpoena authority in specific investigations), *and* S. COMM. ON AGRICULTURE, NUTRITION & FORESTRY, 119TH CONG., RULES OF PROCEDURE, R. 8.2, at 8–9 (Comm. Print 2025) (authorizing subpoenas with agreement of chair and ranking member or with committee vote).

⁸⁴ *Trump v. Mazars USA, LLP*, 591 U.S. 848, 871 (2020) (“When Congress seeks information ‘needed for intelligent legislative action,’ it ‘unquestionably’ remains ‘the duty of *all* citizens to cooperate.’”) (citing *Watkins v. United States*, 354 U.S. 178, 187 (1957)); D.C. Bar Ass’n Legal Ethics Comm., Op. No. 288 (1999), <https://www.dcbbar.org/For-Lawyers/Legal-Ethics/Ethics-Opinions-210-Present/Ethics-Opinion-288> [<https://perma.cc/RUB6-MDZS>] (noting that a congressional subpoena accompanied by the threat of fines and imprisonment meets the standard of “required by law”).

⁸⁵ *See* 2 U.S.C. §§ 192, 194. Even if successful, however, the Executive Branch has claimed the mandatory wording of the statute does not override prosecutorial discretion, making criminal contempt actions against Executive Branch officials challenging. *See* *Whether Congress May Use Inherent Contempt to Punish Executive Branch Officials Who Withhold Subpoenaed Materials Based on a Presidential Assertion of Executive Privilege*, 48 Op. O.L.C. (Dec. 20, 2024) (slip op. at 2). Congress also used “inherent contempt,” in which the House or Senate ordered the arrest, trial, and imprisonment of contemnors until they produced required information or a court ordered them released under habeas proceedings, but the last use of this process was in the 1930s. *See, e.g.,* *Jurney v. MacCracken*, 294 U.S. 125, 143–51 (1935).

⁸⁶ The House and Senate have pursued civil enforcement by adopting resolutions authorizing counsel to bring suits for declaratory relief. *See, e.g.,* S. Res. 837, 118th Cong. (2024) (holding Dr. Ralph de la Torre in civil contempt); H. Res. 430, 116th Cong. (2019) (holding Attorney General William Barr in civil contempt). The Senate also has statutory authority to bring civil cases, although the statute excludes suits involving governmental privilege. *See* 28 U.S.C. § 1365(a). In addition, the House Rules authorize committees, after a vote of the five-member Bipartisan Legal Advisory Group (“BLAG”), to bring civil suits. *See* RULES OF THE HOUSE OF REPRESENTATIVES, R. II(8)(b), H.R. DOC. NO. 118-187, at 401–02 (2025) (providing that the BLAG “speaks for, and articulates the institutional position of, the House in all litigation matters”).

alternatives, minority members may seek to enforce demands for information in civil court based on other specific statutory grants of authority.⁸⁷

The most significant obstacle to an individual minority member or a group of minority members compelling the production of records or testimony is the political reality that they may not convince majority members to support subpoenas or hold recalcitrant witnesses in contempt. Minority members do not have the numbers by themselves to approve subpoenas, assuming all majority members are present, so they must convince at least some majority members to join their efforts.⁸⁸ This is not impossible, but the chances are concededly small.⁸⁹

This challenge is a practical and political impediment, not a constitutional or legal one. Apart from other statutory or mandatory requirements discussed below, a voluntary request for documents or testimony is not legally enforceable without a subpoena, regardless of who offers it. A minority request could become legally binding if a majority of committee members votes to approve a subpoena, but that outcome will not be known until a vote is taken. The flip side is also true: a request from a majority chair is not legally enforceable until a subpoena is issued, either unilaterally or by a vote, and recipients are under no legal obligation to comply with voluntary requests, although they may want to avoid the potential future consequences of failing to do so.

D. *Constitutional Authority of Individual Members*

Individual members have their own constitutional authority to conduct inquiries to fulfill their legislative branch responsibilities, even if they might struggle to compel compliance with demands for information. The general view of the Legislative Branch is that each member of Congress, as a duly elected official with a full range of constitutional responsibilities, has authority to make inquiries, conduct oversight, and perform investigations. At the same time, as Congress's research arm has explained, members may not be able to compel the production of information from parties unwilling to provide it.⁹⁰

⁸⁷ See, e.g., *infra* Part III.B.1 (statute granting certain minority members right to obtain executive documents); *infra* Part III.B.3 (appropriations legislation authorizing individual members to access immigration detention facilities).

⁸⁸ See GARVEY, *supra* note 66, at 2 (noting that “individual Members possess an implicit constitutional responsibility to conduct oversight of the executive branch and inform themselves of matters of legislative importance,” but they have more limited access than the majority to “the tools that may allow them to overcome an agency’s resistance to their information-gathering efforts”).

⁸⁹ See *infra* Part III.A.3 (examples of successful minority subpoenas).

⁹⁰ See WILHELM ET AL., *supra* note 33, at 71–72 (noting that individual members “may conduct investigatory oversight on their own initiative,” but if they are unable to secure enough votes for subpoenas, they generally will not be “supported by the same compulsory legal authorities that are available during committee investigations”).

The Judicial Branch has recognized that individual members have a constitutional basis to seek information. In *Murphy v. Department of the Army*, the D.C. Circuit held that when the Army provided an internal memorandum regarding a dam construction project to a House member representing the district where the dam was being built, the Army did not waive the right to invoke the deliberative process exemption under the Freedom of Information Act (“FOIA”) when a private party sued to obtain the same document.⁹¹ The court contrasted the constitutional authority of members of Congress with the general interests of the public, stating: “[a]ll Members have a constitutionally recognized status entitling them to share in general congressional powers and responsibilities, many of them requiring access to executive information.”⁹² The court noted that all members, including minority members, have their own constitutional right to seek information:

Each of them participates in the law-making process; each has a voice and a vote in that process; and each is entitled to request such information from the executive agencies as will enable him to carry out the responsibilities of a legislator.⁹³

A significant caveat to *Murphy* is that it involved an agency that voluntarily provided Executive Branch documents to a member of Congress. Although the court recognized the constitutional authority of members to *seek* information, it did not address what happens when a member’s request is refused. Generally, absent a separate statutory or other requirement, courts have not supported efforts by individual members to force the Executive Branch to produce information without subpoenas.⁹⁴

Within the Executive Branch, the Justice Department was relieved that *Murphy* found no FOIA waiver when agencies voluntarily provide information to members of Congress, but the Department was concerned with the “quite troubling” suggestion that individual members might have a judicially recognized right to demand more information than the public.⁹⁵ To address this concern, the Department issued guidance in 1984 stating that agencies are not required to provide individual members with information exempted

⁹¹ See *Murphy v. Dep’t of the Army*, 613 F.2d 1151, 1155–57 (D.C. Cir. 1979) (noting that 5 U.S.C. § 552(c) specifies that the deliberative process and other exemptions in FOIA are “not authority to withhold information from Congress”).

⁹² *Id.* at 1157.

⁹³ *Id.*

⁹⁴ See, e.g., *Exxon Corp. v. FTC*, 589 F.2d 582, 593 (D.C. Cir. 1978) (“Election to the Congress does not give an individual subpoena power over whatever information he may happen to be interested in.”); *Leach v. Res. Trust Corp.*, 860 F. Supp. 868, 879–80 (D.D.C. 1994) (declining to review demand by ranking member for access to agency files under FOIA exemption for “Congress”); *Raines v. Byrd*, 521 U.S. 811, 813 (1997) (holding that individual members lack standing to challenge constitutionality of Line Item Veto Act).

⁹⁵ U.S. Dep’t of Just., Off. of Info. Pol’y, *Congressional Access Under FOIA*, 5 FOIA UPDATE 1, 2 (1984), <https://www.justice.gov/archives/oip/blog/foia-update-oip-guidance-congressional-access-under-foia> [<https://perma.cc/7GEZ-9UQX>].

under FOIA, but should exercise discretion and “of course give very careful consideration to any access request received from a Member of Congress, with discretionary disclosure often a possibility.”⁹⁶ Administrations of both political parties have highlighted the challenges of agencies responding to all individual member requests.⁹⁷ At the same time, past administrations dating back to President Reagan highlighted the goal of providing as much information as possible in response to minority and individual member requests.⁹⁸

In 2017, the Trump administration took a much more divisive approach. A White House lawyer reportedly directed federal agencies to stop responding to requests from Democratic members, including committee ranking members, and to provide information only in response to requests from Republican committee chairs.⁹⁹ The White House Counsel’s office asked the Justice Department’s Office of Legal Counsel (“OLC”) for an opinion on this issue, and OLC responded with a letter arguing that individual members lack any constitutional authority to conduct oversight as part of their legislative duties.¹⁰⁰ Omitting any discussion of the *Murphy* decision, OLC rested its conclusion on the claim that minority requests are “not legally enforceable” through subpoenas or contempt.¹⁰¹ OLC framed its claim as a delegation argument, arguing that only committees have been authorized through House and Senate rules to conduct investigations.¹⁰² Unlike with committee chairs who may issue subpoenas unilaterally, the House and Senate have delegated no authority to individual members, according to OLC, so a letter from a minority member “is not properly considered an ‘oversight’ request.”¹⁰³ OLC adopted a “general policy” of providing only documents that were already public or available through FOIA.¹⁰⁴

⁹⁶ *Id.* The Justice Department drew no distinction between the broad FOIA language referring to exempting “Congress” and statutes such as the Privacy Act that refer to “either House of Congress, or . . . any committee or subcommittee thereof.” 5 U.S.C. § 552a(b)(9).

⁹⁷ *See* Owens, *supra* note 41, at 502 (noting Executive Branch position that responding to information requests from all 535 members of Congress could “impair the functioning of the executive branch”).

⁹⁸ Memorandum from President Ronald Reagan to the Heads of Executive Departments and Agencies on Procedures Governing Responses to Congressional Requests for Information 1 (Nov. 4, 1982) (“The policy of this administration is to comply with Congressional requests for information to the fullest extent consistent with the constitutional and statutory obligations of the Executive Branch.”).

⁹⁹ *See* Burgess Everett & Josh Dawsey, *White House Orders Agencies to Ignore Democrats’ Oversight Requests*, POLITICO (June 2, 2017, at 05:11 ET), <https://www.politico.com/story/2017/06/02/federal-agencies-oversight-requests-democrats-white-house-239034> [<https://perma.cc/8FBR-HM9U>].

¹⁰⁰ Auth. of Individual Members of Cong. to Conduct Oversight of the Exec. Branch, 41 Op. O.L.C. 76 (2017).

¹⁰¹ *Id.* at 79.

¹⁰² *See id.* at 76.

¹⁰³ *Id.* at 78.

¹⁰⁴ *Id.* at 79 (noting that responses would “depend on the circumstances” and that additional information could be produced “when doing so would not be overly burdensome,” “would not interfere with their ability to respond in a timely manner to duly authorized oversight requests,” or would “furnish the agency with an opportunity to correct misperceptions or inaccurate factual

OLC may have argued that individual members lack constitutional authority to conduct oversight as a prophylactic defense against possible legal concerns caused by the Trump administration's new position that Democrats were entitled to nothing.¹⁰⁵ There is a hint to this effect in OLC's claim that minority requests do not "trigger any *obligation to accommodate* congressional needs."¹⁰⁶ This appears to be a reference to the D.C. Circuit opinion in *United States v. AT&T Co.*, which held that the Constitution requires the Executive and Legislative Branches "to seek optimal accommodation through a realistic evaluation of the needs of the conflicting branches in the particular fact situation."¹⁰⁷ While a complete refusal to respond to all minority requests might cause some to invoke *AT&T*, under OLC's theory this constitutional mandate could never be triggered by voluntary requests from the minority. In any case, according to one former OLC attorney, although OLC had previously relied on a "zone of uncertainty" that facilitated negotiation, its 2017 opinion "provided express support for upending the longstanding and beneficial tradition of respect between the branches."¹⁰⁸

The most forceful response to the OLC opinion came from a member of President Trump's own party, the Chair of the Senate Judiciary Committee, Senator Chuck Grassley (R-Iowa). First, he sent a letter to President Trump asserting that "*all* members need accurate information from the Executive Branch in order to carry out their Constitutional function to make informed decisions on all sorts of legislative issues covering a vast array of complex matters across our massive federal government."¹⁰⁹ Senator Grassley noted that the OLC opinion "fails to cite and analyze any authority that challenges its

statements"). OLC later referred to rhetoric in case law to support its position, citing *Gojack v. United States*, in which the Supreme Court invalidated a criminal contempt conviction because a subcommittee investigation into Communist Party activities was not approved by the House Committee on Un-American Activities, a requirement in the Committee's rules. *See* Requests by Individual Members of Congress for Executive Branch Information, 43 Op. O.L.C. 42, 46 (2019) (citing *Gojack v. United States*, 384 U.S. 702, 716 (1966)). OLC also referred to the district court opinion in *Lee v. Kelley* denying Senator Jesse Helms's demand for access to the FBI's surveillance file on the Rev. Dr. Martin Luther King, Jr. *See id.* at 46 (citing *Lee v. Kelley*, 99 F.R.D. 340, 342 n.2 (D.D.C. 1983), *aff'd sub. nom.* S. Christian Leadership Conf. v. Kelley, 747 F.2d 777 (D.C. Cir. 1984)) (noting that "he appear[ed] as an individual Senator, without Senate authorization, in what is undeniably an investigatory role").

¹⁰⁵ *See* Laura Jarrett, *DOJ Opens Door for Executive Branch to Ignore Dems' Requests*, CNN (June 2, 2017, at 17:17 ET), <https://www.cnn.com/2017/06/02/politics/olc-memo-congressional-oversight-requests> [<https://perma.cc/9TVT-ENJU>].

¹⁰⁶ 41 Op. O.L.C., *supra* note 100, at 79 (emphasis added).

¹⁰⁷ *United States v. Am. Tel. & Tel. Co.*, 567 F.2d 121, 127 (D.C. Cir. 1977) (footnote omitted); *see also* Owens, *supra* note 41, at 496–99 (describing OLC's traditional view of accommodations process).

¹⁰⁸ Owens, *supra* note 41, at 503; *see also* Tina Seideman, *Minority Party Need Not Inquire: Revisiting the Executive Duty to Respond to Congressional Oversight Authority*, 20 GEO. J.L. & PUB. POL'Y 733, 748–49 (2022) (discussing practical effects of OLC opinion).

¹⁰⁹ Letter from Sen. Charles E. Grassley, Chairman, S. Comm. on the Judiciary, to President Donald J. Trump 1 (June 7, 2017) (emphasis in original).

conclusion,” including in particular the D.C. Circuit’s decision in *Murphy*.¹¹⁰ Next, Senator Grassley placed a hold on President Trump’s pending nomination of Steven Engel to head OLC.¹¹¹ Engel and Senator Grassley then exchanged letters in which Engel admitted that OLC should have addressed *Murphy* and explicitly confirmed that individual members in fact “are ‘authorized’ to seek such information in their roles as constitutional officers.”¹¹² He also wrote that the Executive Branch “should seek to satisfy the legislative needs of Members” and “may well provide information to Members that goes beyond the requirements of the FOIA statute.”¹¹³

For good measure, Senator Grassley also secured a letter from the White House stating that OLC’s 2017 letter “was not intended to provide, and did not purport to provide, a statement of Administration policy.”¹¹⁴ This remarkable letter also explained that the White House’s policy was to “respect the rights of all individual Members, regardless of party affiliation, to request information about Executive Branch policies and programs” and “use its best efforts to be as timely and responsive as possible in answering such requests.”¹¹⁵ With these concessions in hand, Senator Grassley lifted his hold, Engel was confirmed, and OLC issued a new opinion in 2019 more in line with Engel’s letters to Senator Grassley.¹¹⁶ Although some scholars continue to cite OLC’s 2017 letter for the proposition that, “[a]s a constitutional matter, the minority party has no legal rights to information,” they omit any discussion of Chairman Grassley’s letter, the White House’s subsequent letter explaining that the OLC letter was not a statement of Trump administration policy, or OLC’s

¹¹⁰ *Id.* at 3. In keeping with Chairman Grassley’s letter, CRS removed an assertion from an earlier draft of the *Congressional Oversight Manual* that individual members “are not acting pursuant to Congress’s constitutional authority to conduct oversight and investigations.” ALISSA M. DOLAN, ELAINE HALCHIN, TODD GARVEY, WALTER J. OLESZEK & WENDY GINSBERG, CONG. RSCH. SERV., RL30240, CONGRESSIONAL OVERSIGHT MANUAL 56 (2014 ed.).

¹¹¹ See 163 CONG. REC. S4077 (daily ed. July 19, 2017) (statement of Sen. Charles E. Grassley).

¹¹² Letter from Steven A. Engel to Sen. Charles E. Grassley, Chairman, S. Comm. on the Judiciary 1–2 (June 23, 2017).

¹¹³ Letter from Steven A. Engel to Sen. Charles E. Grassley, Chairman, S. Comm. on the Judiciary 1, 4 (July 12, 2017). Unsurprisingly, Engel did not agree that the Executive Branch has a constitutional duty to accommodate individual member requests under *AT&T*. Letter from Steven A. Engel to Sen. Charles E. Grassley, Chairman, S. Comm. on the Judiciary 3 (June 23, 2017).

¹¹⁴ Letter from Marc Short, White House Dir. of Legis. Affs., to Sen. Charles E. Grassley, Chairman, S. Comm. on the Judiciary 2 (July 20, 2017).

¹¹⁵ *Id.* Chairman Grassley confirmed on the Senate floor that Engel, in his letter and in private meetings, agreed that “each Member, whether or not a chairman of a committee, is a constitutional officer entitled to the respect and best efforts of the executive branch to respond to his or her requests for information to the extent permitted by law.” 163 CONG. REC. S4078 (daily ed. July 19, 2017) (statement of Sen. Charles E. Grassley).

¹¹⁶ Requests by Individual Members of Congress for Executive Branch Information, 43 Op. O.L.C. 42, 46–52 (2019) (discussing *Murphy* and distinguishing individual member requests from FOIA requests, but still opposing a judicially enforceable requirement to engage in the accommodations process); see also Levin & Bean, *supra* note 24, at 15–17 (concluding that OLC “exacerbated” problems with the Executive Branch disregarding minority requests).

revised position that individual members are authorized to seek information in their roles as constitutional officers even if they may not have unilateral authority to compel compliance.¹¹⁷

This more comprehensive understanding of minority investigative rights exposes flaws in OLC's overly narrow theoretical construct. Take OLC's claim that minority requests are not constitutionally authorized because they are not "enforceable" through subpoenas. As discussed, *neither* majority *nor* minority requests are enforceable until subpoenas are issued pursuant to the procedures set forth in House or Senate rules. In this legal sense, both letters from committee chairs and ranking members have the same status—unenforceable—until subpoenas are issued. The fact that a chair may have power to issue a subpoena unilaterally in the future does not change the legal status of a voluntary letter request today. Yet OLC treated the *political likelihood* of a chair subsequently issuing a subpoena as having determinative *legal effect* in the present.

OLC's reasoning also rests on the assumption that no subpoenas ever could be issued to enforce minority requests. This assumption is wrong based on both process and precedent. The House and Senate have authorized not one process for issuing subpoenas, but two: unilaterally by committee chairs and through committee deliberation and voting by committee members. OLC focused only on the first method, arguing that the House and Senate have not delegated individual members authority to issue subpoenas unilaterally. OLC failed to address the second method: House and Senate rules delegate authority to any member to make motions for subpoenas, including subpoenas the chair opposes.¹¹⁸ A minority member participating in an investigation within a committee's jurisdiction has just as much legal authority to move for a subpoena as any other committee member; the only difference is the political likelihood of eventually prevailing on a vote to obtain it. The operative question is not whether legal authority exists for minority members, but whether they can convince enough majority members to join their effort.¹¹⁹

There have been several examples, although limited, of minority members succeeding in obtaining subpoenas even when chairs opposed them.¹²⁰ The most recent was offered by Representative Summer Lee (D-Pa.). During an Oversight Committee hearing on the abuse of "Unaccompanied Alien Children," Representative Lee made a successful motion to compel Attorney General Pam Bondi to produce the Justice Department's complete

¹¹⁷ See, e.g., Jennifer L. Selin & Caylie Milazzo, "If Men Were Angels": *The Legal Dynamics of Overseeing the Executive Branch*, 51 PRESIDENTIAL STUD. Q. 426, 435 (2021).

¹¹⁸ Moreover, not all chairs are authorized to issue subpoenas unilaterally, so their only method of approving subpoenas is through debate and voting.

¹¹⁹ See MORTON ROSENBERG, *WHEN CONGRESS COMES CALLING* 136 (2025 ed.) (noting that minority members can use either "the process for obtaining subpoenas through committees, which requires a majority vote or, in some cases, the willingness of a committee chair with unilateral subpoena power").

¹²⁰ See *infra* Part III.A.3 for additional examples.

file on child sex trafficker Jeffrey Epstein. Her motion was debated, amended, and ultimately adopted by the Subcommittee with strong bipartisan support in full compliance with House rules, despite the fact that the chair opposed it.¹²¹ A member of the majority party who voted in favor of her motion described the deliberative process for approving this subpoena as follows:

[Y]ou are watching us. This is democracy in motion We, as an oversight committee, we have writ authority over our subpoena, over this motion [T]here is no one from the White House in the room today. There is no one from the DOJ in the room. This is us operating as our own legislative vehicle doing this independently.¹²²

Apart from successful subpoena motions by the minority, the Executive Branch and other entities may continue to decline to cooperate with voluntary minority requests when it is not in their interests to do so. Whether these refusals are based on legal theory or political calculus, the minority is left with limited options: invoke rules or laws that give them specific rights to seek information, take advantage of other more general parliamentary rules to generate greater leverage, or operate beyond these rules. I turn to each approach below.

III. MINORITY INVESTIGATIVE POWERS BASED IN RULES

In addition to authorizing all members to participate in floor and committee proceedings, the House and Senate have adopted provisions that provide members with rights to take specific investigative steps to gather information and inform their colleagues and the public of their findings. Below I focus on three categories: (A) unicameral rules related directly to Congress's investigative function; (B) statutes enacted by Congress related directly to the investigative function; and (C) general parliamentary rules which, although not expressly related to the investigative function, may be used as leverage to pursue investigative aims. These lists are not comprehensive, but they catalog some of the most significant tools available to the minority, along with some of the benefits and most pressing challenges that accompany them.

¹²¹ See *Catch and Release, Lose and Forget: Addressing the Crisis of Unaccompanied Alien Children—Part I: Hearing Before the Subcomm. on Fed. L. Enf't of the H. Comm. on Oversight and Gov't Reform*, 119th Cong. 4, 22–31 (2025).

¹²² *Id.* at 26–27 (statement of Rep. Nancy Mace (R-S.C.)); see also Dave Rapallo, *The Democrats' Motion to Subpoena the Epstein File Has Legal and Historical Basis*, THE HILL (Aug. 5, 2025, at 09:30 ET), <https://thehill.com/opinion/congress-blog/judicial/5435151-house-subpoena-epstein-file/> [<https://perma.cc/S25K-ALYV>].

A. *House and Senate Rules Related to Congress's Investigative Function*

1. *Right to Invite Minority Hearing Witnesses*

One of Congress's most basic tools to gather information is the committee hearing. Several recent studies have examined the impact that witnesses and their testimony can have on Legislative Branch functions.¹²³ They also show how witness testimony can affect judicial opinions¹²⁴ and influence public opinion.¹²⁵ Hearing witnesses can be Executive Branch officials, private sector representatives, constituents, whistleblowers, or any other person from whom a committee wishes to obtain testimony.¹²⁶ They can discuss existing programs, identify problems that need legislative remedies, provide feedback on legislative proposals, call attention to waste, fraud, or abuse, encourage Executive Branch action without legislation, inform the public about government functions, and serve many other purposes.¹²⁷ Members also can hold witnesses, including Executive Branch officials, to account for their actions. One particularly famous example was former Federal Reserve Chairman Alan Greenspan's testimony after the financial collapse of 2008. During questioning by Chairman Henry Waxman, Chairman Greenspan admitted to the House Oversight Committee that he had "made a mistake" in presuming the self-interest of banks would protect the interests of shareholders, investors, and the public.¹²⁸ His testimony was front page news and, combined with other congressional investigations, helped coalesce support for the Dodd-Frank Act, which passed in the following Congress.¹²⁹

¹²³ See, e.g., PAMELA BAN, JU YEON PARK & HYE YOUNG YOU, HEARINGS ON THE HILL: THE POLITICS OF INFORMING CONGRESS 31–51, 76 (Jeffrey Frieden, John Patty & Elizabeth Maggie Penn eds., 2024) (statistical overview of witnesses selected, rates hearings were held for messaging and policy purposes, and decline in the number of hearings over time); MAYA L. KORNBERG, INSIDE CONGRESSIONAL COMMITTEES 171–72 (2023) (review of educational, rhetorical, and collaborative purposes of committee hearings).

¹²⁴ See, e.g., Collin Coil, Caroline Bruckner, Nicholas Chen, Elizabeth Keith & Karen O'Connor, Congressional Witnesses Matter: Proving Witness Testimony Impact Using Large Language Models 2–27 (May 15, 2025) (unpublished manuscript), <https://ssrn.com/abstract=5180917> (analyzing testimonies from 2007 to 2017 associated with the Affordable Care Act to demonstrate their impact on legislative, administrative, and judicial outcomes).

¹²⁵ See, e.g., Josh Chafetz, *Congressional Overspeech*, 89 *FORDHAM L. REV.* 529, 551–56 (2020); DOUGLAS L. KRINER & ERIC SCHICKLER, *INVESTIGATING THE PRESIDENT: CONGRESSIONAL CHECKS ON PRESIDENTIAL POWER* 74–123 (2016).

¹²⁶ See BAN ET AL., *supra* note 123, at 29–52; DAVIS, *supra* note 71, at 1.

¹²⁷ See *Frequently Asked Questions About Committees*, U.S. SENATE, https://www.senate.gov/committees/committees_faq.htm [<https://perma.cc/V6PW-VH9L>] (last visited Feb. 1, 2026) (classifying hearings into four types: considering legislation, conducting oversight of Executive Branch operations, investigating allegations of wrongdoing, and confirming of nominees).

¹²⁸ *The Financial Crisis and the Role of Federal Regulators: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 110th Cong. 45 (2008) (statement of Alan Greenspan, former Chairman, Fed. Rsv. Bd.).

¹²⁹ See Alan Beattie & James Politi, *'I Made a Mistake,' Admits Greenspan*, *FIN. TIMES* (Oct. 23, 2008, at 16:26 ET), <https://www.ft.com/content/aee9e3a2-a11f-11dd-82fd-000077b07658> [<https://perma.cc/6E3Q-2MK6>]; *Portraits in Oversight: Financial Crisis: Taking on the Big Banks*, LEVIN CTR. FOR OVERSIGHT & DEMOCRACY, <https://levin-center.org/>

Under House and Senate rules, committee chairs have authority to determine when and where to call hearings, what topics to cover, and which witnesses to invite.¹³⁰ An invitation to testify at a hearing is often viewed as an honor,¹³¹ but it can be intimidating when witnesses are under a committee's microscope or are unfamiliar with congressional practice.¹³² The House and Senate have granted all members, including those in the minority, certain rights at hearings. For example, members have a right to question witnesses, and they can elicit information or extract commitments to provide information.¹³³

Minority members also have a right to invite witnesses of their own. House and Senate rules both authorize minority members to have their own separate day of hearings with witnesses they invite.¹³⁴ There are several challenges to this approach. First, the majority decides when to schedule minority hearing days, and they may not occur until months later, after interest in the topic has waned.¹³⁵ In addition, scheduling for potential minority witnesses may be difficult because the majority generally is required to provide only a week's notice.¹³⁶ Not having a minority witness at the primary hearing also removes a tool to help rebut testimony from majority witnesses in real time. In addition, the minority may want to hear from witnesses who have no desire to appear, such as Executive Branch officials or corporate executives who want

what-is-oversight/portraits/financial-crisis/ [https://perma.cc/7K6T-7LMG] (last visited Feb. 8, 2026) (describing Senate hearings leading to the bill's passage).

¹³⁰ RULES OF THE HOUSE OF REPRESENTATIVES, R. XI(2)(c)(1), H.R. DOC. NO. 118-187, at 585 (2025); STANDING RULES OF THE SENATE, R. XXVI(3), R. XXVI(4)(d), S. DOC. NO. 113-18, at 31–32.

¹³¹ See, e.g., *Oversight of the Federal Bureau of Investigation: Hearing before the S. Comm. on the Judiciary*, 119th Cong. (2025) (oral statement of FBI Dir. Kash Patel testifying that “it’s an honor to be here with you today”), <https://www.judiciary.senate.gov/committee-activity/hearings/oversight-of-the-federal-bureau-of-investigation-09-16-2025> [https://perma.cc/N4UC-6JVR] (no published transcript); *Confirmation Hearing on the Expected Nomination of Mr. Peter B. Hegseth to be Secretary of Defense: Hearing Before the S. Comm. on Armed Servs.*, 119th Cong. 27 (2025) (opening statement of Defense Secretary nominee Pete Hegseth testifying that it is “an honor to come before this Committee”).

¹³² See, e.g., WILLIAM N. LAForge, TESTIFYING BEFORE CONGRESS (Chug Roberts ed., 1st ed. 2010) (quoting former Governor Mitch Daniels (R-Ind.) comparing testifying before Congress to “getting a root canal”).

¹³³ RULES OF THE HOUSE OF REPRESENTATIVES, R. XI(2)(j), H.R. DOC. NO. 118-187, at 602–04 (2025); STANDING RULES OF THE SENATE, R. XXVI(1), S. DOC. NO. 113-18, at 31; see, e.g., *Fiscal Year 2026 Request for the Dep’t of Just.: Hearing Before the Subcomm. on Com., Just., Sci. & Related Agencies of the H. Comm. on Approps.*, 119th Cong. (2025) (Attorney General Bondi testifying, in response to questions about canceling three Justice Department programs combating hate crimes, that she had already reversed several decisions and would meet with members to address additional concerns), <https://www.congress.gov/event/119th-congress/house-event/118399> [https://perma.cc/ME8L-8J36] (no published transcript).

¹³⁴ RULES OF THE HOUSE OF REPRESENTATIVES, R. XI(2)(j)(1), H.R. DOC. NO. 118-187, at 602–03 (2025); STANDING RULES OF THE SENATE, R. XXVI(4)(d), S. DOC. NO. 113-18, at 32.

¹³⁵ RULES OF THE HOUSE OF REPRESENTATIVES, R. XI(2), H.R. DOC. NO. 118-187, at 582–613 (2025); HOUSE PRACTICE: A GUIDE TO THE RULES, PRECEDENTS AND PROCEDURES OF THE HOUSE, Ch. 11, § 24 (2024) [hereinafter “HOUSE PRACTICE”] (advising that minority day should be scheduled within “reasonable” timeframe).

¹³⁶ RULES OF THE HOUSE OF REPRESENTATIVES, R. XI(2)(g)(3)(A)(i), H.R. DOC. NO. 118-187, at 594 (2025); STANDING RULES OF THE SENATE, R. XXVI(4)(a), S. DOC. NO. 113-18, at 32.

to avoid public scrutiny. Although the rules allow minority members to invite their own witnesses, they do not authorize the minority to compel attendance. Finally, even supportive witnesses may not want to subject themselves to grilling by the majority and may prefer instead to participate in minority-only events.¹³⁷

For these reasons, the minority is often willing to accept a bargain for hearing witnesses: invite a single minority witness to appear during the main hearing with majority witnesses rather than insist on a separate minority hearing day on an inconvenient or uncertain date in the future.¹³⁸ Some committees have memorialized this arrangement in committee rules.¹³⁹ Still, some minority members have utilized this minority witness rule, especially in the House. For example, House Republicans invoked the rule in 2019 to obtain a minority day to showcase their opposition to legislation converting the District of Columbia into a state.¹⁴⁰ The minority day, however, was scheduled months after the original hearing.¹⁴¹ The Senate minority, in contrast, does not appear to use this provision as frequently.¹⁴²

Minority members could request many more witnesses at hearings than they currently do. Working with outside groups, interested stakeholders, and affected constituencies, they could request panels of multiple witnesses to respond to majority witness testimony and provide proactive minority messaging. A determined and well-organized minority could use this tactic broadly as part of a concerted campaign to bring greater attention to their causes.

2. *Right to Move to Subpoena Witnesses*

As discussed in Part II, subpoenas generally can be authorized in two non-exclusive ways: through deliberation and voting by committees or unilaterally by chairs if they have been granted this authority. For the minority, a threshold issue is whether their motions for subpoenas will be ruled in order. In the House, the rules expressly authorize members to make motions

¹³⁷ See *infra* Part IV.B.1.

¹³⁸ CHRISTOPHER M. DAVIS, CONG. RSCH. SERV., RS22637, HOUSE COMMITTEE HEARINGS: THE “MINORITY WITNESS RULE” 1 (2025) (“In practice, the rule has largely served as a ‘back-stop’ that gives the minority party a procedural recourse should a committee majority refuse to invite witnesses they request. In most hearings, the majority does invite minority witnesses after consultation and negotiation with minority party Members and staff.”).

¹³⁹ See, e.g., H. COMM. ON EDUC. & THE WORKFORCE, 119TH CONG., THE RULES OF THE COMMITTEE ON EDUCATION AND WORKFORCE FOR THE 119TH CONGRESS, R. 8(e), at 5 (Comm. Print 2025) (noting right to minority day of hearings and providing that the “minority party may waive this right by calling at least one witness during a Committee hearing or subcommittee hearing”).

¹⁴⁰ See *Minority Day, Continuation of H.R. 51: “Making D.C. the 51st State, from September 19, 2019”*: Hearing Before the H. Comm. on Oversight & Reform, 116th Cong. 1 (2019) (statement of Ranking Member Jim Jordan (R-Ohio)).

¹⁴¹ *Id.* at 2 (complaint of Ranking Member Jordan).

¹⁴² See, e.g., *Hearing on AIDS Education and Care Before the S. Comm. on Lab. & Hum. Res.*, 101st Cong. 3 (1989) (invocation by Ranking Member Orrin Hatch (R-Utah)).

to subpoena witnesses at hearings.¹⁴³ The minority may not have the numbers to prevail, but the accompanying debate can highlight needed testimony from witnesses who refuse requests to testify voluntarily. The minority can repeat these motions if the majority continues not to call key witnesses. For example, in the weeks after President Trump first returned to office, the minority on the House Oversight Committee moved to subpoena the testimony of Elon Musk, the reputed head of the Department of Government Efficiency (“DOGE”).¹⁴⁴ Although the motion was unsuccessful, it brought significant attention to the issue of DOGE obtaining access to Americans’ personal data.¹⁴⁵ Four months later, they again moved to seek Musk’s testimony, arguing that concerns had deepened.¹⁴⁶ Although this motion was also unsuccessful, the majority was forced to delay proceedings while they rushed to gather enough members to defeat it.¹⁴⁷ Minorities on other House committees have moved for multiple subpoenas in a single hearing to highlight testimony they believe is needed, and these sometimes attract votes from majority members.¹⁴⁸

In the Senate, no rule expressly authorizes senators to move for subpoenas at hearings. Senators may try to move for witness subpoenas at business meetings during which committees debate, vote on, and report legislation and other measures, but since chairs set the agendas, they can rule motions for extraneous business out of order. This occurred during a business meeting held by

¹⁴³ RULES OF THE HOUSE OF REPRESENTATIVES, R. XI(2)(k)(6), H.R. DOC. NO. 118-187, at 605 (2025).

¹⁴⁴ *Rightsizing Government: Hearing Before the H. Comm. on Oversight & Gov’t Reform*, 119th Cong. 4–5 (2025) (motion by Ranking Member Gerry Connolly (D-Va.)).

¹⁴⁵ See, e.g., Josh Meyer, ‘Out of Order!’ House GOP Panel Shoots Down Democrats’ Call to Subpoena Elon Musk over DOGE, USA TODAY (Feb. 5, 2025, at 09:21 ET), <https://www.usatoday.com/story/news/politics/2025/02/05/house-gop-kills-democrats-subpoena-elon-musk-doge/78256422007/> [<https://perma.cc/TW4W-CGNV>]; Ivan Pereira & Jay O’Brien, *Republicans Block Musk from Congressional Subpoena as DOGE Continues to Access Government Data*, ABC NEWS (Feb. 5, 2025, at 05:36 ET), <https://abcnews.go.com/Politics/republicans-block-musk-congressional-subpoena-doge-continues-access/story?id=118487749> [<https://perma.cc/5ZPS-3T6J>].

¹⁴⁶ *The Federal Government in the Age of Artificial Intelligence: Hearing Before the H. Comm. on Oversight & Gov’t Reform*, 119th Cong. 3–4 (2025) (opening statement of Acting Ranking Member Stephen F. Lynch (D-Mass.)).

¹⁴⁷ Press Release, H. Comm. on Oversight & Gov’t Reform Democrats, Oversight Democrats Vote to Subpoena Elon Musk & Get Answers for Americans, Republicans Run to Muzzle Musk (June 6, 2025), <https://oversightdemocrats.house.gov/news/press-releases/oversight-democrats-vote-subpoena-elon-musk-get-answers-americans-republicans> [<https://perma.cc/H7MT-J8K6>]; see also *Locking in the DOGE Cuts: Ending Waste, Fraud, and Abuse for Good: Hearing Before the Subcomm. on Delivering on Gov’t Efficiency of the H. Comm. on Oversight & Gov’t Reform*, 119th Cong. (2025), <https://www.congress.gov/event/119th-congress/house-event/118410> [<https://perma.cc/TWM7-XSQW>] (incomplete published transcript) (Rep. Jasmine Crockett (D-Tex.) moving to subpoena Musk at another hearing).

¹⁴⁸ See, e.g., *Oversight of the Federal Bureau of Investigation: Hearing Before the H. Comm. on the Judiciary*, 119th Cong. 109, 111, 114, 117 (2025) (minority motions, supported by Rep. Thomas Massie (R-Ky.), to subpoena testimony regarding Epstein finances and other matters from CEOs of JP Morgan Chase, Bank of New York Mellon, Bank of America, and Deutsche Bank; Secretary of the Treasury; Deputy Director of the Federal Bureau of Investigation; and Director of the Bureau of Prisons).

the Senate Health, Education, Labor and Pensions Committee when minority members moved to subpoena Musk.¹⁴⁹ Exceptions allow the minority on certain committees to add agenda items to business meetings, but these are rare.¹⁵⁰ In addition, members may avail themselves of the separate rule authorizing the holding of “special meetings” without the chair’s consent, but these require at least some majority buy-in to succeed.¹⁵¹

Finally, senators in the minority may rely on committee-specific rules. For example, Senate Judiciary Committee Rule 4 states that the chair “shall entertain a non-debatable motion to bring a matter before the Committee to a vote.”¹⁵² During a business meeting in July 2025 to consider the nomination of Justice Department official Emil Bove to a circuit court judgeship, Senator Cory Booker (D-N.J.) invoked Rule 4 to move to obtain testimony from a whistleblower who reported that Bove had directed prosecutors to ignore court orders.¹⁵³ Rather than allowing the vote, Chairman Grassley ruled Senator Booker out of order.¹⁵⁴ Although Senator Booker repeatedly appealed to Chairman Grassley to comply with the Committee’s rule, Chairman Grassley refused, which caused the minority to leave in protest.¹⁵⁵

3. *Right to Move to Subpoena Documents*

When seeking documents, minority members can begin by writing letters requesting that agencies or other parties voluntarily produce certain

¹⁴⁹ *Business Meeting Before the S. Comm. on Health, Educ., Lab. & Pensions*, 119th Cong. (Mar. 6, 2025), <https://www.help.senate.gov/hearings/nomination-03-06-2025> [<https://perma.cc/67F4-NFC2>] (no published transcript) (ruling motion out of order).

¹⁵⁰ *See, e.g.*, S. COMM. ON ENERGY & NAT. RES., 119TH CONG., RULES, MEMBERSHIP, AND JURISDICTION OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES, R. 5(a), at 10 (Comm. Print 2025) (providing that a measure shall be included on the next business meeting agenda if a committee member submits a written request at least one week prior to the business meeting); RULES OF THE HOUSE OF REPRESENTATIVES, R. XI(3)(f), H.R. DOC. NO. 118-187, at 626 (2025) (providing that the ranking minority member of the House Ethics Committee may place items on business meeting agendas).

¹⁵¹ *See supra* Part II.C.

¹⁵² S. COMM. ON THE JUDICIARY, 119TH CONG., RULES OF PROCEDURE, R. IV, at 1 (Comm. Print 2025), <https://www.judiciary.senate.gov/about/committee/rules> [<https://perma.cc/QQ73-PQRS>].

¹⁵³ *Executive Business Meeting Before the S. Comm. on the Judiciary*, 119th Cong. (July 17, 2025), <https://www.judiciary.senate.gov/committee-activity/hearings/executive-business-meeting-07-17-2025> [<https://perma.cc/FLA5-7FN3>] (no published transcript).

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*; Breanne Deppisch, ‘Dear God’: Democrats Storm Out of Vote on Controversial Trump Nominee, FOX NEWS (July 17, 2025, at 13:04 ET), <https://www.foxnews.com/politics/dear-god-democrats-storm-out-vote-controversial-trump-nominee> [<https://perma.cc/5XAF-TPW9>] (noting that Chairman Grassley “declined to acknowledge” Senator Booker’s invocation of Rule 4). During the previous Congress when Sen. Lindsey Graham (R-S.C.), then in the minority, invoked Rule 4, Chairman Dick Durbin (D-Ill.) moved to suspend the rule and held a recorded vote before proceeding to a final vote on the matter. *Executive Business Meeting Before the S. Comm. on the Judiciary*, 118th Cong. (Nov. 30, 2023), <https://www.judiciary.senate.gov/committee-activity/hearings/11/30/2023/executive-business-meeting> [<https://perma.cc/2UV7-UQSP>] (no published transcript).

records, but as discussed above, recipients may choose not to comply. The minority can ask the majority to join these requests, but enforcement depends on the majority's willingness to consider compulsory measures. For example, Representative Elijah Cummings (D-Md.), when in the minority, successfully convinced Representative Mark Meadows (R-N.C.), then in the majority, to co-sign a letter requesting information on immigrant children separated from their families under a policy adopted during the first Trump administration.¹⁵⁶ When the Trump administration refused to produce the information, however, Representative Meadows declined Representative Cummings's request to support a subpoena.¹⁵⁷

In the House, the Parliamentarian has advised that members have authority to make motions to subpoena documents at hearings under the same rule that authorizes them to move to subpoena witnesses.¹⁵⁸ Although the text of the rule refers only to witnesses, the accepted practice of committees has been to recognize motions for document subpoenas as well.¹⁵⁹ In one isolated case, former House Oversight Committee Chair Darrell Issa (R-Cal.) disregarded the Parliamentarian and argued that motions to subpoena documents were not in order.¹⁶⁰ In such cases, a workaround for the minority is to move to subpoena *custodians* of specified documents since the subpoena would compel the appearance of a witness. This is how the minority responded to Chairman Issa when they moved to subpoena custodians of records at several mortgage servicing companies accused of mistreating servicemembers.¹⁶¹

It has become common for members of Congress and the media to state as a *fait accompli* that “the minority does not have subpoena power.”¹⁶² Although it is true that only certain committee chairs have authority to

¹⁵⁶ Letter from Reps. Mark Meadows, Chairman, Subcomm. on Gov. Ops., and Elijah E. Cummings, Ranking Member, H. Comm. on Oversight & Gov't Reform, to Sec'y Kirstjen M. Nielsen, Sec'y Alex M. Azar II & Att'y Gen. Jeff Sessions (July 5, 2018).

¹⁵⁷ Although Rep. Cummings was not able to obtain the documents at the time, he obtained them in response to subpoenas he issued as chairman in the next Congress. See STAFF OF H. COMM. ON OVERSIGHT & GOV'T REFORM, 116TH CONG., REP. ON CHILD SEPARATIONS BY THE TRUMP ADMINISTRATION 7 (Comm. Print 2019) (documenting at least 2,648 separated children).

¹⁵⁸ HOUSE PRACTICE, *supra* note 135, ch. 11, § 24.

¹⁵⁹ *Id.* (stating that motions to issue subpoenas at hearings under House Rule XI, cl. 2(k)(6) “can cover the full range of persons *and papers* for which subpoenas may be authorized” (emphasis added)).

¹⁶⁰ *Consumer Financial Protection Efforts: Answers Needed: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 112th Cong. 33 (2011) (statement of Chairman Darrell Issa).

¹⁶¹ *Id.* at 32–35. To avoid fallout from voting against the interests of servicemembers, Chairman Issa announced that he and Ranking Member Cummings agreed to send bipartisan letters seeking documents from financial entities, and Rep. Cummings withdrew his motion. *Id.* at 102–03.

¹⁶² See, e.g., *The Capitol Insurrection: Unexplained Delays and Unanswered Questions (Part II): Hearing Before the H. Comm. on Oversight & Reform*, 117th Cong. 5 (2021) (statement of Chairman James Comer (R-Ky.)); Michael Gold, *House Democrats Choose Youth over Seniority for Top Oversight Post*, N.Y. TIMES (June 24, 2025), <https://www.nytimes.com/2025/06/24/us/politics/democrats-congress-oversight-post.html> [<https://perma.cc/Z9BU-3WZ7>] (“Democrats, as the minority party, cannot issue subpoenas.”).

issue subpoenas unilaterally, and although it is unlikely the minority will win votes on subpoena motions, there have been multiple instances in which both Democratic and Republican minorities have been successful in obtaining subpoenas. Three examples from both sides of the aisle on the House Oversight Committee illustrate this point.

In 2004, Ranking Member Henry Waxman was investigating how President George W. Bush's administration mismanaged Iraqi oil sale proceeds after the Iraq War.¹⁶³ Although the majority held multiple hearings about the Oil-for-Food Program run by the United Nations, they had not focused on the Bush administration's mishandling of the Development Fund for Iraq.¹⁶⁴ At a hearing chaired by Representative Christopher Shays (R-Conn.), Representative Waxman moved to subpoena the Federal Reserve Bank of New York, which had information about the administration's actions. Representative Waxman had a compelling argument on the merits, explaining that if the Committee was investigating mismanagement by the United Nations, it should examine U.S. actions as well.¹⁶⁵ He also had ready to insert into the record an email sent from the Bank on the eve of the hearing explaining that it would provide the documents if it had a compulsory subpoena.¹⁶⁶ Finally, Representative Waxman had the numbers on that day to win the vote since several Republican members did not attend.¹⁶⁷ Chairman Shays agreed to issue the subpoena without a vote, and the Committee obtained the documents.¹⁶⁸

In 2009, then-Ranking Member Issa was investigating allegations that Countrywide Financial Corporation's "VIP Program" provided beneficial loan terms to gain favor with government officials, including members of Congress.¹⁶⁹ When it was reported that the Committee's chairman, Representative Edolphus Towns (D-N.Y.), had received two Countrywide loans,¹⁷⁰ Representative Issa threatened subpoena motions that caused concern for

¹⁶³ See Letter from Rep. Henry Waxman, Ranking Member, to Rep. Tom Davis (R-Va.), Chairman, H. Comm. on Oversight & Gov't Reform (July 29, 2004).

¹⁶⁴ See *Hearing on the U.N. Oil for Food Program: Cash Cow Meets Paper Tiger Before the Subcomm. on Nat'l Sec., Emerging Threats & Int'l Rels. of the H. Comm. on Oversight & Gov't Reform*, 108th Cong. 5 (2004) (opening statement of Ranking Member Henry Waxman).

¹⁶⁵ *Id.* at 6.

¹⁶⁶ *Id.* at 46–47.

¹⁶⁷ *Id.* at 7. Rep. Waxman also had the benefit of Chairman Shays's reputation as a reasonable chair who had a sincere interest in the well-being of the Iraqi people, having traveled to Iraq more than any other member of Congress. See Micheal Luo, *Many Lawmakers Go to Iraq, but Few Change Their Minds*, N.Y. TIMES (Apr. 3, 2007), <https://www.nytimes.com/2007/04/03/world/middleeast/03visit.html> [<https://perma.cc/L28H-3RCX>].

¹⁶⁸ *The U.N. Oil for Food Program*, *supra* note 164, at 86.

¹⁶⁹ Letter from Rep. Darrell Issa, Ranking Member, H. Comm. on Oversight & Gov't Reform, to Kevin Downey, Williams & Connolly LLP, Couns. for Franklin Raines 2–4 (Mar. 4, 2009).

¹⁷⁰ John R. Emshwiller, *Key Lawmaker Received Countrywide Loans*, WALL ST. J. (Aug. 7, 2009, at 12:01 ET), <https://www.wsj.com/articles/SB124960476129713019> [<https://perma.cc/J9LK-FS2E>].

Democratic members.¹⁷¹ After two Democrats broke ranks and indicated support,¹⁷² Chairman Towns agreed to sign the subpoena without a vote.¹⁷³

Finally, as mentioned above in Part II, on July 23, 2025, Representative Summer Lee, the Ranking Member of the Subcommittee on Federal Law Enforcement, moved to subpoena the Justice Department to produce the complete investigative file on convicted child sex trafficker Jeffrey Epstein.¹⁷⁴ During debate on the motion, the Subcommittee adopted an amendment to allow the Justice Department to redact personal information from Epstein's victims and rejected an amendment to allow the Justice Department to withhold information it deemed not "credible."¹⁷⁵ Unlike the examples above in which the Chairs agreed to issue subpoenas without voting, in this case, the Subcommittee Chair, Representative Clay Higgins (R-La.), called a vote on Representative Lee's amendment, which passed with overwhelming bipartisan support.¹⁷⁶

4. *Motion for Resolution of Inquiry*

Any member of the House may introduce a resolution of inquiry on the House floor to request from the president or demand from agencies information in their possession.¹⁷⁷ If a committee to which the resolution is referred fails to act within fourteen legislative days—favorably, unfavorably, or without recommendation—a motion on the floor to discharge the committee is privileged and must be considered before other business.¹⁷⁸ Under these procedures, minority members may introduce resolutions of inquiry

¹⁷¹ Sharyl Attkisson, *Tension Mounts over Countrywide Investigation*, CBS NEWS (Oct. 15, 2009, at 04:25 ET), <https://www.cbsnews.com/news/tension-mounts-over-countrywide-investigation/> [<https://perma.cc/9KNK-JMGR>].

¹⁷² Susan Crabtree, *Two Democrats Buck Rep. Towns, Call for Countrywide Probe*, THE HILL (Oct. 10, 2009, at 11:34 ET), <https://thehill.com/homenews/house/53080-two-democrats-buck-rep-towns-call-for-countrywide-probe/> [<https://perma.cc/3D39-GN9M>].

¹⁷³ Press Release, H. Comm. on Oversight & Gov't Reform, *Issa-Towns Reach Agreement on Countrywide Subpoena* (Oct. 24, 2009), <https://oversight.house.gov/issa-towns-reach-agreement-on-countrywide-subpoena/> [<https://perma.cc/RTA6-7V25>]; Edmund L. Andrews, *House Oversight Leader Agrees to Subpoena Documents on Mortgage Deals*, N.Y. TIMES (Oct. 23, 2009), <https://www.nytimes.com/2009/10/24/us/politics/24mortgage.html> [<https://perma.cc/WRZ4-FCKZ>] (noting that Chairman Towns canceled a committee meeting after Rep. Issa vowed to move for a subpoena).

¹⁷⁴ *Catch and Release, Lose and Forget: Addressing the Crisis of Unaccompanied Alien Children—Part I: Hearing Before the Subcomm. on Fed. Law Enf't of the H. Comm. on Oversight & Gov't Reform*, 119th Cong. 4 (2025) (statement of Rep. Summer Lee).

¹⁷⁵ *Id.* at 30.

¹⁷⁶ *Id.* at 31 (passing by vote of eight to two).

¹⁷⁷ RULES OF THE HOUSE OF REPRESENTATIVES, R. XIII(7), H.R. DOC. NO. 118–187, at 701–02 (2025). See generally CHRISTOPHER M. DAVIS, CONG. RSCH. SERV. IN12539, RESOLUTIONS OF INQUIRY IN THE HOUSE 1 (2025) (noting that the House has recognized this right since its earliest days); Louis Fisher, "The Law": *Congressional Access to Presidential Documents: The House Resolution of Inquiry*, 33 PRESIDENTIAL STUD. Q. 898, 899–900 (2003) (describing origins).

¹⁷⁸ Fisher, *supra* note 177, at 901.

that essentially force committees to hold business meetings in relatively short order to consider resolutions.¹⁷⁹ If committees fail to take up resolutions within this timeframe, the minority can put all House members on record through floor votes. As with other motions, resolutions of inquiry will not pass without at least some majority support, but they can call attention to information the majority is declining to request and the Executive Branch is refusing to provide.¹⁸⁰

Dwarfing these obstacles, however, is a procedural maneuver House Republicans made on April 29, 2025, to block consideration of additional resolutions of inquiry. During the first months of the Trump administration, minority members had been filing resolutions of inquiry at a rapid clip on a variety of topics, including the firing of federal employees, security clearances for Musk and his team, and DOGE's use of artificial intelligence.¹⁸¹ No resolutions had been successful, but minority members then filed resolutions seeking information about Defense Secretary Pete Hegseth's use of Signal group chats to discuss classified military strikes on Yemen.¹⁸² Majority members on the House Armed Services Committee sought to avoid consideration of the resolution because their ranks included one Republican who had called on President Trump to fire Secretary Hegseth and other members of the Committee who were facing competitive races.¹⁸³ Instead, the House Rules Committee added a provision to a rule governing floor debate on an unrelated measure, declaring the five-month period from April 29 to September 30 a single "legislative day" for purposes of resolutions of inquiry, effectively postponing their consideration until October.¹⁸⁴ The measure passed on a party line vote, although some Republicans expressed

¹⁷⁹ DAVIS, *supra* note 177, at 1 (“[A] House committee will virtually always mark up and report a resolution of inquiry that has been referred to it—even one it opposes—in order to retain control of the measure and prevent supporters from triggering floor votes. . . .”).

¹⁸⁰ The House Parliamentarian advises that the Executive Branch “ordinarily” complies with such resolutions. *See id.* (citing Deschler, Ch. 15 §§ 2, 3). However, CRS reports that the House receives information in about 30% of cases in which resolutions are approved. *Id.* at 2.

¹⁸¹ *See* H.R. Res. 187, 119th Cong. (2025) (Rep. Kweise Mfume (D-Md.)); H.R. Res. 264, 119th Cong. (2025) (Rep. Robert Garcia (D-Cal.)); H.R. Res. 286, 119th Cong. (2025) (Rep. Melanie Stansbury (D-N.M.)).

¹⁸² *See* H.R. Res. 316, 119th Cong. (2025) (Rep. Stephen F. Lynch); H.R. Res. 255, 119th Cong. (2025) (Rep. Gregory Meeks (D-N.Y.)).

¹⁸³ Jordain Carney & Meredith Lee Hill, *House GOP Leaders Move to Forestall Potential Signalgate Votes*, POLITICO (Apr. 28, 2025, at 10:23 ET), <https://www.politico.com/live-updates/2025/04/28/congress/house-rules-signalgate-pete-hegseth-00314755> [<https://perma.cc/ZH4E-7FRD>].

¹⁸⁴ H.R. Res. 354, 119th Cong. § 5 (2025) (rule providing for consideration of H.J. Res. 60) (“Each day during the period from April 29, 2025 through September 30, 2025, shall not constitute a legislative day for purposes of clause 7 of Rule XIII.”); Michael Gold, *Republicans Freeze House Efforts to Compel Information from Trump*, N.Y. TIMES (Apr. 29, 2025), <https://www.nytimes.com/2025/04/29/us/politics/house-republicans-trump-information.html> [<https://perma.cc/2Z2R-HKAU>].

concern¹⁸⁵ and others pointed to similar actions by Democrats when they controlled the House during the Biden administration.¹⁸⁶ When the October deadline was about to be reached, the House extended this provision to March 2026 by adopting a rule reported out by the Rules Committee, at which point the House extended it again, effectively freezing all resolutions of inquiry through the 119th Congress.¹⁸⁷

B. Federal Statutes Related to Congress's Investigative Function

1. Right of Certain Members to Obtain Documents from Agencies

In addition to rights minority members have by virtue of rules adopted by the House or Senate, they also have certain rights in statutes. One of these, enacted through legislation signed by President Calvin Coolidge in 1928, is known as the “seven-member rule” in the House and the “rule of five” in the Senate.¹⁸⁸ Under this law, federal agencies are required to provide “any information” requested by seven members of the House Oversight Committee or five members of the Senate Homeland Security and Governmental Affairs Committee.¹⁸⁹ By the terms of the statute, both the House and Senate delegated authority to individual members who may not be in the majority and are not committee chairs. In other words, this statutory provision empowered minorities on these committees to obtain information from federal agencies since their majority counterparts already had the ability to use subpoenas. The Executive Branch has honored some requests made pursuant to this statute. For example, the State Department complied with a request under this statute in 2016 when the minority of the House Oversight Committee sought records about former Secretary of State Colin Powell’s advice to Secretary Hillary Clinton not to use agency email systems.¹⁹⁰ In addition, the General Services Administration (“GSA”) complied with a request in 2016 for information about GSA’s lease with President Trump for the Old Post Office Building in

¹⁸⁵ Don Wolfensberger, *Are House Resolutions of Inquiry Obsolete?*, THE HILL: CONG. BLOG (May 8, 2025, at 11:00 ET), <https://thehill.com/opinion/congress-blog/5288545-congressional-reshuffle-rules-committee/> [<https://perma.cc/22NP-UYU2>] (quoting Rep. Chip Roy (R-Tx.) saying the House should allow members “to get information and ask questions of the Executive Branch, no matter who is in power”).

¹⁸⁶ See, e.g., Melanie Zanona & Manu Raju, *Democrats Quietly Limit House GOP Effort to Press for Probes into Biden Administration*, CNN (Sep. 23, 2021, at 13:02 ET), <https://www.cnn.com/2021/09/22/politics/democrats-limit-house-gop-investigations-biden-administration> [<https://perma.cc/MD4R-9T33>].

¹⁸⁷ H.R. Res. 707, 119th Cong. § 8 (2025); H.R. Res. 1131, 119th Cong. § 5 (2026).

¹⁸⁸ See 5 U.S.C. § 2954.

¹⁸⁹ *Id.* (providing that an agency “shall submit any information requested of it relating to any matter within the jurisdiction of the committee”).

¹⁹⁰ See Letter from Julia Frifield, Dep’t of State, to Rep. Elijah E. Cummings, Ranking Member, H. Comm. on Oversight & Gov’t Reform (Sep. 7, 2016).

Washington, D.C., noting that providing the information was consistent with judicial and OLC opinions.¹⁹¹

There are several challenges with using this statute, however. First, although previous administrations had concluded that this statutory right met even OLC's limited interpretation of a constitutional delegation to minority members, the Trump administration reversed course in 2017. Although GSA had previously complied with requests under the statute, the Trump administration rejected subsequent requests to obtain information about GSA's failure to enforce a contract provision barring elected officials from being parties to government leases.¹⁹² GSA's one-page response conspicuously ignored the statute's clear delegation of authority to members of the minority and instead forwarded OLC's 2017 letter—just days before the White House withdrew it—arguing that “[i]ndividual members of Congress, including ranking minority members, do not have the authority to conduct oversight in the absence of a specific delegation by a full house, committee, or subcommittee.”¹⁹³

Litigation to enforce demands under this law has had limited success. Two cases brought in the 2000s resulted in split decisions by district courts.¹⁹⁴ When minority members of the House Oversight Committee went to court a third time in the GSA case above, the D.C. Circuit held that the members had standing under Article III to enforce this statutory right.¹⁹⁵ The court noted the law's “express conferral of its informational right on a *minority* of committee members.”¹⁹⁶ Although the Executive Branch argued that the remedy

¹⁹¹ See Letter from Lisa A. Austin, Gen. Serv. Admin., to Rep. Elijah E. Cummings, Ranking Member, H. Comm. on Oversight & Gov't Reform (Jan. 3, 2017) (citing 6 Op. O.L.C. 632 (1982); 28 Op. O.L.C. 79 (2004)).

¹⁹² See Letter from Rep. Elijah E. Cummings, Ranking Member, H. Comm. on Oversight & Reform, et al., to Acting Adm'r Saul Japson, Gen. Servs. Admin. (Feb. 8, 2017); Letter from Rep. Elijah E. Cummings, Ranking Member, H. Comm. on Oversight & Reform, et al., to Timothy O. Horne, Acting Adm'r, Gen. Serv. Admin. (June 5, 2017); Letter from Rep. Elijah E. Cummings, Ranking Member, H. Comm. on Oversight & Reform, et al., to Timothy O. Horne, Acting Adm'r, Gen. Servs. Admin. (July 6, 2017).

¹⁹³ Letter from P. Brennan Hart III, Acting Adm'r, Gen. Servs. Admin., to Rep. Elijah E. Cummings, Ranking Member, H. Comm. on Oversight & Gov't Reform (July 17, 2017); see Letter from Short, *supra* note 114 (withdrawing OLC opinion as statement of Trump administration policy).

¹⁹⁴ In the first case, a district court held that members had standing and granted summary judgment. See *Waxman v. Evans*, No. CV014530(AJWX), 2002 WL 32377615, at *10 (C.D. Cal. Jan. 18, 2002) (request for adjusted census data). In the second, a district court held that members lacked standing. See *Waxman v. Thompson*, No. CV 04-3467(MANx), 2006 WL 8432224, at *16 (C.D. Cal. July 24, 2006) (request for actuarial data regarding drug pricing legislation).

¹⁹⁵ See *Maloney v. Murphy*, 984 F.3d 50, 70 (D.C. Cir. 2020) (“When the Political Branches duly enact a statute that confers a right, the impairment of which courts have long recognized to be an Article III injury, proper adherence to the limited constitutional role of the federal courts favors judicial respect for and recognition of that injury.”); Rohini Kurup, *D.C. Circuit Court Upholds Subpoena-Like Power for House Minority*, LAWFARE (Dec. 29, 2020, at 16:18 ET), <https://www.lawfaremedia.org/article/dc-circuit-court-upholds-subpoena-power-house-minority> [<https://perma.cc/YV85-9NC8>].

¹⁹⁶ *Maloney*, 984 F.3d at 67 (emphasis in original).

for minority members should be to seek a subpoena from the majority, this effort would be unlikely to succeed for political reasons, as discussed above, and more importantly, would undermine the clear purpose of the authority Congress provided in the law. As the D.C. Circuit noted, requiring the minority to go back to the majority for a subpoena would “empty the statute of all meaning.”¹⁹⁷

Another challenge is that resolving these disputes can be a lengthy process.¹⁹⁸ The GSA investigation and ensuing litigation, for example, spanned four congresses and two administrations over seven years. Democrats ultimately withdrew their suit, which GSA had appealed to the Supreme Court, because the Biden administration produced the vast majority of records withheld by the Trump administration.¹⁹⁹ As a result, the Court, which had granted certiorari to hear the case, ordered its dismissal and vacated the lower court’s decision.²⁰⁰

Another potential challenge is the Trump administration’s claim that information available under the statute should be limited to only those categories of information in previously required reports that were discontinued by the law when it passed in 1928.²⁰¹ According to this argument, because Congress repealed specific statutory requirements for certain reports at the same time it granted minority members the right to demand information, members seeking to invoke the statute should be limited to information that would have been provided in the reports discontinued by the 1928 law. However, this argument contradicts the plain language of the law, which covers “any information” rather than information in discontinued reports. The Trump administration made this claim in the GSA case, but the D.C. Circuit did not address it.²⁰²

Another more recent challenge is that the House majority added a provision to their rules in 2023 requiring that one of the seven signatories from the

¹⁹⁷ *Id.* at 69; *see also* *Leach v. Res. Trust Corp.*, 860 F. Supp. 868, 876 n.7 (D.D.C. 1994) (noting that “the House has in fact provided alternative procedures through which small groups of individual congressmembers can request information *without awaiting formal Committee action*” (emphasis added)).

¹⁹⁸ *See* Berman, *supra* note 19, at 399 (noting generally that “the pace of typical litigation is inconsistent with the needs of members of Congress, particularly those in the House of Representatives, whose two-year countdown clock begins to tick on their first day in office”).

¹⁹⁹ Press Release, Rep. Jamie Raskin, Ranking Member, H. Comm. on Oversight & Accountability, Ranking Member Raskin’s Statement on Committee Democrats’ Lawsuit Seeking Documents About Former President Trump’s Conflicts of Interests in the Former Trump Hotel (June 7, 2023), <https://oversightdemocrats.house.gov/news/press-releases/ranking-member-raskin-s-statement-on-committee-democrats-lawsuit-seeking> [<https://perma.cc/4VAW-9J7N>].

²⁰⁰ *See* Carnahan v. Maloney, 143 S. Ct. 2653, 2653 (2023).

²⁰¹ Act to Discontinue Certain Reports Now Required by Law to Be Made to Congress, Pub. L. No. 70-611, 45 Stat. 986, 986–96 (codified at 44 U.S.C. § 1722) (listing 128 discontinued reports).

²⁰² Defendants’ Mot. to Dismiss the Complaint Pursuant to Rules 12(b)(1) and 12(b)(6) at 37, *Cummings v. Murphy*, 321 F.Supp.3d 92 (D.D.C. 2018) (1:17-cv-02308-APM), 2018 WL 3493560 (citing S. REP. NO. 70-1320, at 4; H.R. REP. NO. 70-1757, at 6) (arguing that “House and Senate reports demonstrate that the statute was intended only to preserve access to the sort of information included in the reports abolished by the 1928 Act”).

House Oversight Committee invoking the statute must be the chair.²⁰³ This is a direct effort to undermine the right of the minority to obtain information from the Executive Branch, as members of the minority pointed out.²⁰⁴ However, it is unclear whether members of one house of Congress, through a unicameral change to their internal rules, may impose on courts additional standing requirements that are not included in a statute passed through bicameralism and presentment. It is possible that a court may find that it is bound to follow the statute and that the House, acting alone, may not impose additional requirements on the Judicial Branch.²⁰⁵

Senate rules do not similarly require the chair to be among the senators making a request under the statute. Although the Senate's use of this provision had long been dormant, it sprung to life in July 2025 when members of the Homeland Security and Governmental Affairs Committee sent a request for the Attorney General to produce a wide range of material related to Jeffrey Epstein.²⁰⁶

2. Right to Request GAO Investigations

Another option for minority members is to request investigations by GAO.²⁰⁷ Congress established GAO in the Budget and Accounting Act signed by President Warren G. Harding in 1921.²⁰⁸ The law created GAO as a Legislative Branch agency authorized to “investigate all matters related to the receipt, disbursement, and use of public money.”²⁰⁹ Congress and the President agreed that agencies must provide GAO with information required to fulfill its mandate and that GAO may inspect agency records.²¹⁰ GAO has

²⁰³ H.R. Res. 5, 118th Cong. § 3(i) (2023) (enacted); JANE A. HUDIBURG, CONG. RSCH. SERV., R48466, HOUSE RULES CHANGES AFFECTING COMMITTEE PROCEDURE IN THE 119TH CONGRESS (2025-2026) (2025).

²⁰⁴ See, e.g., Press Release, Office of Rep. Gerald E. Connolly, Connolly Statement on Republican Rules Package for the 119th Congress (Jan. 2, 2025), <https://web.archive.org/web/20250102213431/https://connolly.house.gov/news/documentsingle.aspx?DocumentID=6175> [<https://perma.cc/PLM5-4NWR>].

²⁰⁵ If one house of Congress could require courts to recognize unicameral requirements on top of statutory ones, it theoretically could prevent members from exercising other statutory rights, such as making FOIA requests, without permission from committee chairs. See *infra* Part III.B.5.

²⁰⁶ Letter from Sen. Gary Peters (D-Mich.), Ranking Member, S. Comm. on Homeland Sec. & Gov't Affs., et al., to Pamela Bondi, Att'y Gen. (July 29, 2025); see also Greg Dotson, *The Epstein Files and the Seven Member Rule*, JUST SECURITY (Jan. 5, 2026), <https://www.justsecurity.org/128047/epstein-files-seven-member-rule/> [<https://perma.cc/2CDY-7TJ5>].

²⁰⁷ As mentioned, this list is not exhaustive. In addition to seeking information from GAO, members could request information from other Legislative Branch entities, such as CRS, as well as Executive Branch offices with oversight or regulatory authority including Offices of Inspectors General, the Office of Special Counsel, or the Consumer Product Safety Commission, for example.

²⁰⁸ Budget and Accounting Act, 1921, Pub. L. No. 67-13, 42 Stat. 20 (codified in scattered sections of 31 U.S.C.).

²⁰⁹ 31 U.S.C. § 712(1).

²¹⁰ See *id.* § 716(a)(2).

issued protocols that set forth the order of requests it accepts from members of Congress.²¹¹ GAO's highest priority is fulfilling "congressional mandates," which are requirements in statutes, resolutions, conference reports, and committee reports.²¹² Its second priority is to fulfill "[s]enior congressional leader and committee leader requests," which include requests from committee chairs and, importantly, ranking minority members.²¹³ GAO's third priority is to fulfill individual member requests.²¹⁴ Based on these protocols, minority members can ask GAO to investigate the activities of agencies and other entities, and they may elevate their requests from third priority to second with the support of a committee's ranking member.

In addition to receiving GAO's final report, members can receive status updates and briefings along the way.²¹⁵ These briefings may be public and may include press.²¹⁶ In some cases, GAO staff with subject matter expertise will answer questions from the media and provide on-camera interviews.²¹⁷ GAO officials may testify as minority witnesses on the same panel with majority witnesses or at minority days of hearings.²¹⁸ Members also may request copies of work papers that GAO obtains during its investigations, including "access to specific, selected audit documentation."²¹⁹

The biggest challenge to the minority using this tool is when agencies refuse to cooperate with GAO. Congress anticipated this problem and enacted a statutory process in 1980 to resolve these types of impasses.²²⁰ Under this law, GAO is required to make a written request to the agency head, who has twenty days to respond.²²¹ If the agency still refuses, GAO can file a report with the agency head, President, director of the Office of Management and Budget ("OMB"), Attorney General, and Congress.²²² If this effort fails, the law authorizes GAO to bring a civil enforcement action in the U.S. District Court for the District of Columbia.²²³ This process gives members of Congress and Executive Branch officials opportunities to address disputes informally before going to court, and it is particularly important for the minority. Unlike majority requesters who have a higher likelihood of approving subpoenas,

²¹¹ See U.S. GOV'T ACCOUNTABILITY OFF., GAO-17-767G, GAO'S CONGRESSIONAL PROTOCOLS 8 (2017).

²¹² *Id.*; see *infra* Part III.B.4.

²¹³ U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 211, at 8.

²¹⁴ See *id.*

²¹⁵ See *id.* at 10.

²¹⁶ See *id.* at 20–21.

²¹⁷ See *id.*

²¹⁸ See *id.* at 18–19.

²¹⁹ *Id.* at 19–20.

²²⁰ See General Accounting Office Act of 1980, Pub. L. No. 96-226, 94 Stat. 311, 311–16 (codified as amended in scattered sections of 31 U.S.C.).

²²¹ See 31 U.S.C. § 716(b)(1).

²²² See *id.*

²²³ See *id.* § 716(b)(2).

the minority relies more on the law's authorization of civil litigation to bring recalcitrant agency officials to the table.

Despite this explicit statutory authority to seek judicial enforcement, a district court found in 2002 that GAO lacked standing to bring a case under the statute.²²⁴ In *Walker v. Cheney*, Representatives Henry Waxman and John Dingell (D-Mich.), the Ranking Members of the House Oversight and Energy and Commerce Committees, respectively, asked GAO to investigate then-Vice President Dick Cheney's energy task force and its meetings with industry officials.²²⁵ When the task force refused to provide requested information, GAO followed the statutory process, which culminated in a civil suit.²²⁶ Ruling against GAO, the court disregarded the express grant of enforcement authority in the law, noting that the House had not passed a *subsequent* resolution authorizing GAO's specific suit in this case.²²⁷ The court also noted, incorrectly, that the documents were sought only by individual members rather than by a committee and suggested they had an "alternate remedy" of seeking a subpoena instead of GAO using the statutory remedy Congress authorized.²²⁸ It is unclear whether the court's opinion was influenced by the involvement of the Vice President, but GAO decided not to appeal.²²⁹

Congress overwhelmingly rejected the district court's position in landslide bipartisan votes on the GAO Access and Oversight Act, which it passed in 2017.²³⁰ The law made clear Congress's intent that GAO is authorized and has standing to bring suit without the need for subsequent votes by Congress or a committee.²³¹ Members of the House and Senate of both parties reiterated this view during debate on the measure.²³² GAO has continued to accept

²²⁴ See *Walker v. Cheney*, 230 F. Supp. 2d 51, 74–75 (D.D.C. 2002).

²²⁵ See *id.* at 55–56.

²²⁶ See *id.* at 58.

²²⁷ See *id.* at 69–70 ("Here, the highly generalized allocation of enforcement power to the Comptroller General twenty-two years ago hardly gives this Court confidence that the current Congress has authorized this Comptroller General to pursue a judicial resolution of the specific issues affecting the balance of power between the Article I and Article II Branches that have crystal[l]ized during the course of this dispute and lawsuit.")

²²⁸ *Id.* at 69. But see Press Release, U.S. Gov't Accountability Off., GAO Press Statement on *Walker v. Cheney* (Feb. 7, 2003), <https://www.gao.gov/assets/2019-11/w020703.pdf> [<https://perma.cc/CW8Z-WHLR>] (noting that even under this incorrect interpretation, the court made a "material factual error" by disregarding the fact that "two full committee chairs and two subcommittee chairs of the Senate, acting on behalf of their respective committees and subcommittees, all of which had jurisdiction over this matter," also asked GAO to conduct the investigation).

²²⁹ See Press Release, *supra* note 228.

²³⁰ See 163 CONG. REC. S335 (daily ed. Jan. 17, 2017) (passed in the Senate by a vote of ninety-nine to zero); 163 CONG. REC. H70 (daily ed. Jan. 4, 2017) (passed in the House by voice vote under suspension of the rules).

²³¹ See 31 U.S.C. § 716(a)(1) ("In reviewing a civil action under this section, the court shall recognize the continuing force and effect of the authorization in the preceding sentence until such time as the authorization is repealed pursuant to law.")

²³² See, e.g., 163 CONG. REC. S334 (daily ed. Jan. 17, 2017) (Sen. Ben Sasse (R-Neb.) stating that the bill "clarifies that GAO does have standing in court to fight for Federal records the next time a Federal agency tries to deny the GAO—and therefore us—access to that data"); 163 CONG. REC. H71 (daily ed. Jan. 4, 2017) (Rep. Lacy Clay (D-Mo.) stating that the bill would

minority requests, and although it has not had to initiate civil suits, having statutory enforcement authority appears to provide leverage in negotiations with agencies.²³³

Finally, there have been more recent challenges to GAO's authority, independence, and potential willingness to take on minority requests. These include a failed attempt to embed a DOGE team into GAO despite its status as a Legislative Branch agency,²³⁴ reports that the Trump administration was readying a challenge to GAO's authority to review impoundments of federal funds,²³⁵ unsuccessful efforts by House Republicans to slash GAO's funding,²³⁶ and the possibility of a separation of powers "battle royale" over President Trump's upcoming nomination for a new Comptroller General to lead GAO for the next fifteen years.²³⁷

3. *Right to Inspect Government Facilities*

Members gain valuable information by visiting government facilities and speaking with agency employees, and they have been doing so for many years. In his capacity as an individual senator, Harry S. Truman traveled more than 10,000 miles to visit defense facilities across the country and, based on his findings, proposed a special committee to examine profiteering in defense

"explicitly provide GAO with standing to pursue litigation if an entity in the Executive Branch improperly denies the GAO access to information").

²³³ See, e.g., U.S. GOV'T ACCOUNTABILITY OFF., GAO-25-107007, CARIBBEAN FIREARMS: AGENCIES HAVE ANTI-TRAFFICKING EFFORTS IN PLACE, BUT STATE COULD BETTER ADDRESS ACTIVITIES 2 (2024) (responding to a request from minority members of the House and Senate and reporting on documents and interviews of officials from the Departments of Commerce, Homeland Security, Justice, and State).

²³⁴ See Letter from Edda Emmanuelli Perez, Gen. Couns., Gov't Accountability Off., to Amy Gleason, Acting Adm'r, Dep't of Gov't Efficiency (May 16, 2025) (rejecting effort); Katherine Tully-McManus & Jennifer Scholtes, *Senate Republicans Hint at Clawing Back Hiring and Firing Power for Congressional Agencies*, POLITICO (May 21, 2025, at 13:55 ET), <https://www.politico.com/live-updates/2025/05/21/congress/congress-weighs-hiring-and-firing-power-00362928> [<https://perma.cc/GB8T-3Z5S>] (quoting Sen. Susan Collins (R-Me.) as having stated that "I do not think it's appropriate for DOGE to be trying to reorganize it or enter it in any way").

²³⁵ See Jeff Stein, Hannah Natanson, Carolyn Y. Johnson & Dan Diamond, *Trump Administration Is Preparing to Challenge Budget Law, U.S. Officials Say*, WASH. POST (June 25, 2025), <https://www.washingtonpost.com/business/2025/06/25/trump-budget-law-challenge/> [<https://perma.cc/VRA7-7LKE>].

²³⁶ See H.R. REP. NO. 119-178, at 26 (2025) (party line vote of thirty-four to twenty-eight to approve bill reducing GAO funding from approximately \$812 million for fiscal year 2025 to \$415 million for fiscal year 2026). *But see* S. REP. NO. 119-38, at 50 (2025) (vote of twenty-six to one to reject House cuts and appropriate nearly \$812 million); Continuing Appropriations, Agriculture, Legislative Branch, Military Construction and Veterans Affairs, and Extensions Act, 2026, Pub. L. No. 119-37, div. C, 139 Stat. 495, 581 (2025) (enacting Senate appropriation level).

²³⁷ Kevin R. Kosar, *Senate and Trump on a Collision Course over the Leadership of the GAO*, WASH. EXAM'R (Nov. 14, 2025, at 05:13 ET), <https://www.washingtonexaminer.com/premium/3880837/trump-senate-battle-new-gao-leader/> [<https://perma.cc/U7DY-4PBJ>].

contracting that became a model of effective congressional oversight.²³⁸ Similarly, Senator Grassley “famously drove his car to the Pentagon after being stonewalled by Defense Department officials who wouldn’t allow him to speak with a certain department employee about a highly critical report.”²³⁹

Whether members can gain entry to facilities controlled by the Executive Branch may depend on political, operational, and legal factors. For the political calculus, members of the same party as the President are less likely to be turned away, as are members of the opposing party who are in the majority on committees of jurisdiction and could threaten subpoenas or withhold agency funding. But members in the minority from a different party than the President face the longest odds. The Executive Branch also may have legitimate concerns with members accessing certain facilities at will.²⁴⁰

Individual members have statutory rights to access certain facilities. Since 2019, Congress has passed legislation providing that appropriated funds may not be used to restrict members of Congress from visiting “any facility operated by or for the Department of Homeland Security used to detain or otherwise house aliens.”²⁴¹ The law states that agency officials may not prevent members from entering “for the purpose of conducting oversight” or “require a Member of Congress to provide prior notice of the intent to enter a facility.”²⁴² Despite the Executive Branch’s compliance with this law for years, starting in June 2025 the Trump administration imposed a seven-day advance notice requirement and claimed that certain detention facilities were not in fact detention facilities.²⁴³ Experts quickly concluded that the guidelines violated

²³⁸ See S. Res. 71, 77th Cong. (Feb. 13, 1941) (creating Special Committee to Investigate the National Defense Program, known as the “Truman Committee”); see also 87 CONG. REC. 830–38 (1941) (explaining “his duty at this time to place before the Senate certain information which I have, and which I am sure is of vital importance to the success of the national-defense program”); Theodore Wilson, *The Truman Committee on War Mobilization, 1941–44*, in CONGRESS INVESTIGATES: A CRITICAL AND DOCUMENTARY HISTORY 636–67 (Roger A. Bruns, David L. Hostettler & Raymond W. Smock eds., 2011).

²³⁹ Press Release, Sen. Chuck Grassley, Grassley to Gates: Defense IG Audits Need Changes in Order to Root Out Waste (Sep. 8, 2010), <https://www.grassley.senate.gov/news/news-releases/grassley-gates-defense-ig-audits-need-changes-order-root-out-waste> [https://perma.cc/233N-NBQF] (also noting that Sen. Grassley’s discoveries helped pass legislation to freeze the Pentagon budget while President Reagan was seeking to increase it).

²⁴⁰ See, e.g., Meagan Flynn, *D.C. Jail Officials Turn Away GOP Members of Congress Who Showed Up to Check on January 6 Suspects*, WASH. POST (July 29, 2021), https://www.washingtonpost.com/local/dc-politics/dc-jail-gop/2021/07/29/8362d17e-f096-11eb-bf80-e3877d9c5f06_story.html [https://perma.cc/N7FN-QKZJ] (reporting that several members of Congress “barged into the Justice Department” to challenge the detention of January 6 suspects awaiting trial, calling them “political prisoners”).

²⁴¹ Further Consolidated Appropriations Act, 2024, Pub. L. No. 118-47, § 527(a), 138 Stat. 460, 619 (2024).

²⁴² *Id.* § 527(a)–(b).

²⁴³ See *Congressional Member Delegation (CODEL) and Congressional Staff Delegation (STAFFDEL) Information*, U.S. CUSTOMS & BORDER PROT. (July 22, 2025), <https://www.cbp.gov/about/congressional-resources/protocol-congressional-facility-visits> [https://perma.cc/F6K9-W775]; U.S. IMMIGR. & CUSTOMS ENF’T, FACILITY VISIT AND ENGAGEMENT PROTOCOL FOR MEMBERS OF CONGRESS AND STAFF (June 2025), <https://iptp-production.s3.amazonaws.com/>

the law.²⁴⁴ Minority members brought public pressure to bear, including by sending letters objecting to the practice,²⁴⁵ engaging in public protests,²⁴⁶ posing questions at agency press conferences,²⁴⁷ and insisting on continued access even after being indicted.²⁴⁸ When the administration continued to refuse access, a dozen minority members challenged the administration's actions in court, where it remains pending.²⁴⁹

4. *Right to Receive Congressionally Mandated Information*

Over many years, Congress has passed numerous laws requiring the submission of information in thousands of reports to Congress.²⁵⁰ These include reports from entities within the Legislative Branch itself, such as GAO and the Congressional Budget Office, as well as from the Judicial Branch, president, Executive Branch agencies, independent commissions, and federally chartered private corporations.²⁵¹ Minority members can use information in these reports to question administration policies, fact-check assertions, and

com/media/documents/iceFacilityVisitationCongressional.pdf [https://perma.cc/Q6NT-X25P] (asserting that field offices detaining immigrants are not “used to detain or otherwise house aliens” under the law).

²⁴⁴ See, e.g., Andrea Castillo, *ICE Issued New Rules for Congress Members Visiting Detention Centers. Experts Say They're Illegal*, L.A. TIMES (June 19, 2025, at 14:41 PT), <https://www.latimes.com/politics/story/2025-06-19/dhs-keeps-denying-access-to-members-of-congress-attempting-oversight-experts-say-its-illegal> [https://perma.cc/H346-WH48].

²⁴⁵ See, e.g., Letter from Rep. Maxwell Alejandro Frost (D-Fla.), Rep. Veronica Escobar (D-Tex.), and Rep. Jason Crow (D-Colo.) to Kristi Noem, Sec’y of Homeland Sec., and Todd Lyons, Acting Dir. of Immigr. and Customs Enf’t (May 12, 2025).

²⁴⁶ See, e.g., Luis Ferré-Sadurní, *What’s Inside a 10th Floor ICE Office? New York Democrats Want to Know*, N.Y. TIMES (June 20, 2025), <https://www.nytimes.com/2025/06/20/nyregion/ny-democrats-access-26-federal-plaza-noem.html> [https://perma.cc/L92G-P8F3].

²⁴⁷ See, e.g., Summer Lin, Christopher Buchanan, Rachel Uranga, Hannah Fry & James Queally, *Tensions over L.A. Immigration Sweeps Boil Over as Padilla is Tackled, ICE Arrests Pick Up*, L.A. TIMES (June 12, 2025, at 15:38 PT), <https://www.latimes.com/california/story/2025-06-12/second-night-curfew-downtown-los-angeles> [https://perma.cc/4KUT-GDY5] (resulting in forcible arrest).

²⁴⁸ See, e.g., Alexander Mallin & Meredith Deliso, *Rep. LaMonica McIver Indicted by Grand Jury over Incident at ICE Detention Facility*, ABC NEWS (June 10, 2025, at 20:13 ET), <https://abcnews.go.com/Politics/rep-lamonica-mciver-indicted-grand-jury-incident-ice-detention-facility/story?id=122711570> [https://perma.cc/L976-MFDP].

²⁴⁹ See *Neguse v. U.S. Immigr. & Customs Enf’t*, No. 25-cv-2463, 2026 WL 575509, at *20 (D.D.C. Mar. 2, 2026) (granting stay of ICE advance notice policy).

²⁵⁰ See RULES OF THE HOUSE OF REPRESENTATIVES, R. II(2)(b), H.R. DOC. NO. 118-187, at 383 (2025) (requiring the House Clerk to submit at the beginning of each Congress a comprehensive list of reports Congress is entitled to receive).

²⁵¹ See REPORTS TO BE MADE TO CONGRESS: COMMUNICATION FROM THE CLERK, U.S. HOUSE OF REPRESENTATIVES, H. DOC. NO. 119-4 (2025). In 2022, Congress passed the Access to Congressionally Mandated Reports Act to establish a single online portal for publicly available reports and a procedure for committees to obtain reports with information that is not public. James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Pub. L. No. 117-263, §§ 7241–48, 136 Stat. 2427, 3677–83 (2022); see also Memorandum from Shalanda D. Young, Dir., Off. of Mgmt. and Budget, and Hugh Nathaniel Halpern, Dir., U.S. Gov’t Publ’g Off., “Access to Congressionally Mandated Reports Act” Implementation Guidance (June 21, 2023).

support additional inquiries. For example, the State Department is required to issue a report on global terrorism every year.²⁵² In 2004, in the wake of the September 11, 2001, attacks and wars in Afghanistan and Iraq, President George W. Bush's administration issued a report boasting of a decline in worldwide terrorism in 2003.²⁵³ Deputy Secretary of State Richard Armitage cited this news as "clear evidence that we are prevailing in the fight."²⁵⁴ However, Representative Waxman, then Ranking Member of the House Oversight Committee, conducted a comprehensive comparison of instances listed in the report with public reporting of terrorist attacks and discovered the numbers were wrong. He sent a letter to Secretary of State Colin Powell objecting to manipulation of the data and reporting that the number of significant terrorist attacks had increased by more than 35% since 2001.²⁵⁵ Faced with these facts, Secretary Powell publicly acknowledged this "big mistake"²⁵⁶ and issued a revised report.²⁵⁷

A challenge for the minority is how to respond when the Executive Branch flouts the law and declines to produce information required by statute. Most reporting provisions do not include enforcement mechanisms but instead rely on Congress's power to call hearings with agency officials, issue subpoenas, withhold future funding, or take other measures.²⁵⁸ When the majority declines to exercise these tools, the minority can marshal public opinion and, even if they may lack standing themselves, encourage other injured parties to seek judicial enforcement of the statute. For example, a law first passed

²⁵² See 22 U.S.C. § 2656f (and, in subsection (c), requiring report in unclassified form accompanied by classified appendix).

²⁵³ See U.S. DEP'T OF STATE, PATTERNS OF GLOBAL TERRORISM 2003 1 (2004) (reporting "the lowest annual total of international terrorist attacks since 1969").

²⁵⁴ Richard Armitage, Deputy Sec'y of State, Remarks on the Release of the 2003 "Patterns of Global Terrorism" Annual Report (Apr. 29, 2004), <https://2001-2009.state.gov/s/d/former/armitage/remarks/31961.htm> [<https://perma.cc/9H9B-F5NA>].

²⁵⁵ Letter from Rep. Henry A. Waxman, Ranking Member, H. Comm. on Gov't Reform, to Colin L. Powell, Sec'y of State (May 17, 2004), https://irp.fas.org/congress/2004_cr/waxman051704.pdf [<https://perma.cc/VJJ5-C72A>].

²⁵⁶ Dan Eggen, *Powell Calls Report 'A Big Mistake'*; *State Dept., CIA Probe Terror Study*, WASH. POST (June 13, 2004), <https://www.washingtonpost.com/archive/politics/2004/06/14/powell-calls-report-a-big-mistake/5feb2459-03b7-4b5a-bf9e-18a61d9a6dc8/> [<https://perma.cc/ZGC5-EKJ8>].

²⁵⁷ See Colin L. Powell, *Remarks on the Release of Revised Patterns of Global Terrorism 2003 Annual Report*, U.S. DEP'T OF STATE ARCHIVE (June 22, 2004), <https://2001-2009.state.gov/secretary/former/powell/remarks/33796.htm> [<https://perma.cc/2Z6L-238K>] (noting that "Congressman Waxman and his staff was correct; there were errors").

²⁵⁸ A recent example was the Epstein Files Transparency Act, which required the Justice Department, within thirty days of enactment, to release all documents in its possession relating to the Epstein matter but included no penalties or remedies for failure to comply. See Pub. L. No. 119-38, §§ 2-3, 139 Stat. 656, 656-58 (2025). The Justice Department failed to produce the full set of documents, leaving it up to Congress to consider how to respond. See Dareh Gregorian, *One Month After the Epstein Files Deadline, Only a Fraction of the DOJ's Records Have Been Released*, NBC NEWS (Jan. 20, 2026, at 17:22 ET), <https://www.nbcnews.com/politics/justice-department/one-month-epstein-files-deadline-rcna254416> [<https://perma.cc/Q2MM-LTXY>] (discussing alternatives including holding the Attorney General in contempt).

in a one-year appropriations bill and later made permanent requires OMB to create a public website to report on the administration's apportionments of funds appropriated by Congress and to notify the House and Senate Committees on Appropriations and Budget in certain circumstances.²⁵⁹ As Professor Eloise Pasachoff has noted, until this provision was passed, there was no easy way for Congress or the public to know "if presidents were imposing troublingly unrelated restrictions on agencies through apportionment[.]"²⁶⁰ When President Trump assumed office in 2025, OMB Director Russell Vought shut down this Public Apportionments Database, claiming the information was pre-decisional and that its release could endanger national security.²⁶¹ The Ranking Members of the House and Senate Appropriations Committees, Representative Rosa DeLauro (D-Conn.) and Senator Patty Murray (D-Wash.), objected by issuing public statements²⁶² and even posted a version of Director Vought's letter with redline corrections.²⁶³ GAO also condemned Director Vought's actions and warned of the negative implications for "congressional oversight, specifically with regard to Congress's power of the purse."²⁶⁴ Finally, when good government groups brought suit in district court and won in an unusually direct ruling, the website was restored.²⁶⁵

²⁵⁹ Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, div. E, §§ 204, 749(a)(1)–(3), 136 Stat. 4459, 4667, 4718 (2022) (making provisions permanent and requiring reporting when apportionments are not made in the required time; when they condition the availability of appropriations on further action; and when they "may hinder the prudent obligation of such appropriation or the execution of a program, project, or activity by such department or agency").

²⁶⁰ Eloise Pasachoff, *Modernizing the Power of the Purse Statutes*, 92 GEO. WASH. L. REV. 359, 372 (2024).

²⁶¹ See Letter from Russell T. Vought, Dir., Off. of Mgmt. & Budget, to Rep. Rosa DeLauro, Ranking Member, H. Comm. on Appropriations (Mar. 29, 2025); Paul M. Krawzak, *White House Scraps Public Spending Database*, ROLL CALL (Mar. 24, 2025, at 14:50 ET), <https://rollcall.com/2025/03/24/white-house-scraps-public-spending-database/> [<https://perma.cc/6N68-JGDR>].

²⁶² See Press Release, Rep. Rosa DeLauro, Ranking Member, H. Comm. on Appropriations, *What Are They Hiding? DeLauro, Murray Demand OMB Promptly Restore Access to Website Detailing Federal Spending Allocations, as Federal Law Requires* (Mar. 24, 2025), <https://democrats-appropriations.house.gov/news/press-releases/what-are-they-hiding-delauro-murray-demand-omb-promptly-restore-access-website> [<https://perma.cc/8SWD-349H>].

²⁶³ See Press Release, Rep. Rosa DeLauro, Ranking Member, H. Comm. on Appropriations, *DeLauro Edits Vought's Letter: "Fixed It For You"* (Apr. 2, 2025) <https://democrats-appropriations.house.gov/news/press-releases/delauro-edits-voughts-letter-fixed-it-you> [<https://perma.cc/S6XL-JK34>].

²⁶⁴ Letter from Edda Emmanuelli Perez, Gen. Couns., Gov't Accountability Off., to Russell T. Vought, Dir., Off. of Mgmt. & Budget (Apr. 8, 2025).

²⁶⁵ See *Citizens for Resp. & Ethics in Wash. v. Off. of Mgmt. & Budget*, 791 F. Supp. 3d 29, 37 (D.D.C. 2025) ("Defendants are therefore required to stop violating the law!"); *Citizens for Resp. & Ethics in Wash. v. Off. of Mgmt. & Budget*, No. 25-1051 (D.D.C. Jan. 28, 2026), Dkt. No. 46 (granting motion to enforce order restoring website); *Public Apportionments Database*, OFF. OF MGMT. & BUDGET, <https://apportionment-public.max.gov/> [<https://perma.cc/7S3J-GZ5E>] (last visited Feb. 8, 2026) ("The public release of apportionment documents on this website fulfills the requirement in Public Law 117-103 for the Office of Management and Budget (OMB) to post each document apportioning an appropriation.").

5. *Rights Available to the General Public*

If unsuccessful in invoking information-gathering rules or statutes specific to members of Congress, minority members may turn to rights available to the general public to obtain specific information. For example, like anyone, members may request records from agencies under FOIA and initiate suits under the law if their requests are denied.²⁶⁶ Members may be hesitant, however, because of the possible perception that doing so could undermine their claims of individual constitutional authority and normalize their treatment by the Executive and Judicial Branches as no more deserving of information than the public. Yet many are increasingly doing so.²⁶⁷

Members of Congress may also utilize other statutes, such as the Privacy Act, which authorizes members of the public to obtain information about themselves in systems of records maintained by agencies.²⁶⁸ Some members of Congress not only have filed their own requests, but have launched campaigns to encourage their constituents to do the same. For example, in response to reports that DOGE was collecting sensitive information about American citizens from agencies across the government,²⁶⁹ Representative Jamie Raskin (D-Md.), the Ranking Member of the House Judiciary Committee, demanded all records about himself in DOGE's possession and urged all Americans to seek their own records as well.²⁷⁰

The two most significant challenges to this course of action are the Trump administration's willingness to litigate to withhold information and its staff firings at public records offices. The administration went to court to prevent DOGE from complying with FOIA, for example, and the Supreme Court granted an emergency request to vacate a D.C. Circuit judgment and stay a district court discovery order in the case.²⁷¹ The administration also reportedly

²⁶⁶ See BENJAMIN M. BARCZEWSKI & MEGHAN M. STUESSY, CONG. RSCH. SERV., R47090, CONGRESS AND THE FREEDOM OF INFORMATION ACT (FOIA) 2 (2023).

²⁶⁷ See, e.g., Lauren Harper, *Congress' Investigative Powers Face Existential Threat*, FREEDOM OF THE PRESS FOUND. (Apr. 17, 2025), <https://freedom.press/the-classifieds/congress-investigative-powers-face-existential-threat/> [<https://perma.cc/P9ZS-PEUC>] (noting that members "should not have to file FOIA requests to try and get information from agencies, but it is a growing necessity").

²⁶⁸ See 5 U.S.C. § 552a; see also Federal Advisory Committee Act, 5 U.S.C. §§ 1001–1014 (requiring public access to information provided to the Executive Branch through advisory committees).

²⁶⁹ See, e.g., Laurel Wamsley, *The Government Already Knows a Lot About You. DOGE Is Trying to Access All of It*, GBH (Mar. 11, 2025), <https://www.wgbh.org/news/2025-03-11/the-government-already-knows-a-lot-about-you-doge-is-trying-to-access-all-of-it> [<https://perma.cc/A4JF-9ME5>].

²⁷⁰ See *DOGE and the Privacy Act*, OFF. OF REP. JAMIE RASKIN, <https://raskin.house.gov/doge-and-the-privacy-act/7d584383-5eaf-46d9-baed-caa427bd297d> [<https://perma.cc/FF9Y-A39K>] (last visited Feb. 4, 2026).

²⁷¹ U.S. DOGE Serv. v. Citizens for Resp. & Ethics in Wash., 145 S. Ct. 1981 (2025) (mem.).

moved to “gut” offices that handle records requests and terminated FOIA staff who released information that contradicted administration positions.²⁷²

C. *More General Rules as Levers for Congress’s Investigative Function*

Apart from rules and statutes specific to the rights of members to gather information, members can try to use more general parliamentary rules to pursue investigative ends. Whether these tactics are effective may depend on how well they are designed to achieve a member’s underlying objectives. If members have enough support, they may be able to halt a measure entirely. They also may be able to delay action, force the majority to go through more time-consuming procedures, and temporarily mitigate potentially harmful effects. In addition to serving as acts of protest to gain public backing and impose political costs on the majority, these tactics can be used to extract concessions in exchange for commitments to withdraw objections or refrain from objecting in the future. They also can create incentives for the majority to support minority information requests and for the Executive Branch to disclose requested information. Although there are limitless combinations of procedural tactics members can employ, I provide a few illustrative examples below.

1. *Unanimous Consent, Senate Holds, and House Suspension Calendar*

Much of the day-to-day work of Congress relies on the adoption of routine motions to waive or suspend rules that otherwise require more time-consuming procedures. Perhaps the most common is a motion for unanimous consent (“UC”), which helps speed consideration of matters that are not in dispute.²⁷³ UC motions, which are used on the floor and in committees, require the agreement of all members.²⁷⁴ Any minority member can object to UC motions as part of broader efforts to fulfill investigative objectives.

²⁷² See, e.g., Ellen Nakashima, Warren P. Strobel & Aaron Schaffer, *Gabbard’s Team Has Sought Spy Agency Data to Enforce Trump’s Agenda*, WASH. POST (July 8, 2025), <https://www.washingtonpost.com/national-security/2025/07/08/gabbard-dig-odni-weaponization-intelligence/> [<https://perma.cc/RV74-T96V>] (reporting that Director of National Intelligence Tulsi Gabbard fired FOIA officials who processed request for intelligence assessment concluding the Venezuelan government was not directing an invasion of the United States by prison gang Tren de Aragua); Sydney Lupkin, *After Promising Transparency, RFK Guts Public Records Teams at HHS*, NPR (Apr. 3, 2025, at 05:02 ET), <https://www.npr.org/sections/shots-health-news/2025/04/03/g-s1-57888/hhs-fda-rfk-foia-public-records> [<https://perma.cc/8ETJ-PKPB>].

²⁷³ See HOUSE PRACTICE, *supra* note 135, ch. 54, § 1 (citing JASON A. SMITH, CONSTITUTION, JEFFERSON’S MANUAL, AND RULES OF THE HOUSE OF REPRESENTATIVES, § 872, H.R. DOC. NO. 118-187, at 708 (2025); then citing 4 ASHER C. HINDS, HINDS’ PRECEDENTS OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES, §§ 3058–3059, at 144–45; and then citing 8 CLARENCE CANNON, CANNON’S PRECEDENTS OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES, § 2794, at 412–13); FLOYD M. RIDDICK & ALAN S. FRUMIN, RIDDICK’S SENATE PROCEDURE: PRECEDENTS AND PRACTICES, S. DOC. NO. 101-28, at 1811 (1992) [hereinafter “RIDDICK’S SENATE PROCEDURE”].

²⁷⁴ See HOUSE PRACTICE, *supra* note 135, ch. 54, §§ 1, 5.

For example, individual senators have blocked UC motions for legislation,²⁷⁵ resolutions,²⁷⁶ and nominees.²⁷⁷ Senators have also objected to UC motions to waive the requirement to read aloud entire measures under consideration. Senator Chuck Schumer (D-N.Y.) did this to protest President Trump's One Big Beautiful Bill, eating up sixteen hours of floor time,²⁷⁸ and Senator Ron Johnson (R-Wis.) forced a full reading of President Biden's COVID response legislation.²⁷⁹ A similar tactic was used in 2009 when the minority on the House Energy and Commerce Committee objected to a UC motion to waive the reading of an amendment to a lengthy energy and climate bill.²⁸⁰ Anticipating this objection, the majority secured the services of a professional speed reader, resulting in a good-natured withdrawal of the objection.²⁸¹

In the Senate, an offshoot of the UC process is the informal practice of placing "holds" on bills, nominees, and other matters. The purpose of a hold is to signal that a senator would object if a UC motion were brought to the floor, where there is seldom enough time for the Senate to debate and vote on every measure.²⁸² Senators of both parties have utilized holds, including Senator Tommy Tuberville (R-Ala.), who placed holds on UC motions for military nominees to protest the Pentagon's abortion policy,²⁸³ and Senator

²⁷⁵ See, e.g., Clare Foran & Brian Stelter, *Senate GOP Blocks Bill to Protect Journalists After Trump Opposes It*, CNN (Dec. 10, 2024, at 17:45 ET), <https://www.cnn.com/2024/12/10/politics/senate-gop-blocks-press-protections-bill> [<https://perma.cc/LUX4-9LV6>].

²⁷⁶ See, e.g., Ashley Murray, *U.S. Senate GOP Blocks Resolution Condemning Trump Pardons of Jan. 6 Attackers*, MO. INDEPENDENT (Jan. 29, 2025, at 06:00 ET), <https://missouriindependent.com/2025/01/29/repub/u-s-senate-gop-blocks-resolution-condemning-trump-pardons-of-jan-6-attackers/> [<https://perma.cc/LJ7W-6PFR>].

²⁷⁷ See, e.g., FORBES BREAKING NEWS, *Rick Scott Blocks Unanimous Consent Request to Confirm Judicial Nominees, Then Tim Kaine Responds* (YouTube, Nov. 20, 2024), <https://www.youtube.com/watch?v=mYsBBMsNi1A> [<https://perma.cc/4LXU-M7YS>].

²⁷⁸ See 171 CONG. REC. S3612 (daily ed. June 28, 2025); see also Benjamin Guggenheim, *Megabill Reading Wraps Up After Nearly 16 Hours*, POLITICO (June 29, 2025, at 15:19 ET), <https://www.politico.com/live-updates/2025/06/29/congress/senate-megabill-done-reading-00432205> [<https://perma.cc/6PK9-B738>].

²⁷⁹ See Nicholas Wu, *Republican Ron Johnson Forces Senate to Read All 628 Pages of Biden's COVID Bill Aloud*, USA TODAY (Mar. 5, 2021, at 07:04 ET), <https://www.usatoday.com/story/news/politics/2021/03/04/ron-johnson-forces-senate-read-bidens-entire-covid-19-bill-aloud/4582579001> [<https://perma.cc/HYA6-CPEP>].

²⁸⁰ See Ian Talley, *Need for Speed (Read) to Pass Climate Bill*, WALL ST. J. (May 20, 2009), <https://www.wsj.com/articles/SB124278191732237461> [<https://perma.cc/P258-WLNZ>].

²⁸¹ See *American Clean Energy and Security Act of 2009 Markup, Day 4 Before the H. Comm. on Energy and Com.*, 111th Cong. (2009); C-SPAN, *Energy Bill Speed Reader* (YouTube, May 20, 2009), <https://www.youtube.com/watch?v=HwOZNS3WhyY> [<https://perma.cc/3S6H-5PCA>].

²⁸² See MARK J. OLESZEK, CONG. RSCH. SERV., R43563, "HOLDS" IN THE SENATE 1 (2017).

²⁸³ See Anastasia Obis, *Impacts of Tuberville's Military Holds Will Be Felt for Years*, FED. NEWS NETWORK (Mar. 4, 2024, at 18:53 ET), <https://federalnewsnetwork.com/federal-report/2024/03/impacts-of-tubervilles-military-holds-will-be-felt-for-years/> [<https://perma.cc/V25V-G9Q4>].

Brian Schatz (D-Haw.), who used this tactic to block State Department nominees in response to President Trump's decision to dismantle USAID.²⁸⁴

As discussed in more detail in Part V.D, these tactics may be most effective when linked to specific investigative demands. For example, senators could place holds on individual nominees or classes of nominees while indicating that they would lift their holds if demands for documents or testimony are met. Senator Grassley used this tactic in 2013 when he threatened to delay President Obama's nominee to be the director of the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") until the Justice Department provided access to 1,200 documents regarding its agreement to drop a False Claims Act case against St. Paul, Minnesota, allegedly in exchange for dropping a separate case before the Supreme Court.²⁸⁵ In 2023, Senator Rand Paul (R-Ky.) agreed to drop his hold on State Department nominees after the agency produced documents regarding the pandemic.²⁸⁶

In the House, apart from UC motions, a significant amount of business is conducted through the suspension calendar process, which requires a two-thirds vote to pass a measure under expedited floor consideration.²⁸⁷ The suspension calendar may be used for matters as routine as naming post offices or as significant as passing continuing resolutions.²⁸⁸ House Speaker Mike Johnson (R-La.) relied on this tool to pass the 2024 defense authorization bill.²⁸⁹ Any group of members can block suspension calendar proceedings if they can muster more than one-third of voting House members, and they can try to extract concessions in the process. For example, in 2024, majority members angered at Speaker Johnson's collaboration with Democrats to pass budget legislation began defeating multiple unrelated suspension measures—demanding that he work with them to lower topline spending and

²⁸⁴ See Sahil Kapur, Frank Thorp V & Abigail Williams, *Democratic Sen. Brian Schatz Puts a Hold on Trump's State Department Nominees*, NBC NEWS (Feb. 3, 2025, at 15:20 ET), <https://www.nbcnews.com/politics/congress/democratic-sen-brian-schatz-puts-hold-trumps-state-department-nominees-rcna190470> [<https://perma.cc/W9AC-9KLX>].

²⁸⁵ See Jordy Yager, *Grassley Threatens to Hold up ATF Nominee over Separate Dispute*, THE HILL (Jan. 31, 2013, at 21:44 ET), <https://thehill.com/homenews/senate/140901-grassley-threatens-to-hold-up-atf-nominee-over-separate-dispute/> [<https://perma.cc/3KU2-MDAR>].

²⁸⁶ See David Sivak, *Rand Paul Drops Hold on State Department Nominees in Exchange for COVID-19 Documents*, WASH. EXAM'R (July 28, 2023, at 00:23 ET), <https://www.washingtonexaminer.com/news/1757064/rand-paul-drops-hold-on-state-department-nominees-in-exchange-for-covid-19-documents/> [<https://perma.cc/4B5K-3GFT>].

²⁸⁷ See RULES OF THE HOUSE OF REPRESENTATIVES, R. XV(1), H.R. DOC. NO. 118-187, at 716–20 (2025) (requiring two-thirds of members voting, with a quorum being present); CHRISTOPHER M. DAVIS, CONG. RSCH. SERV., R44734, HOW LEGISLATION IS BROUGHT TO THE HOUSE FLOOR: A SNAPSHOT OF PARLIAMENTARY PRACTICE IN THE 114TH CONGRESS (2015–2016) 3 (2017).

²⁸⁸ See, e.g., 170 CONG. REC. H5781 (daily ed. Sep. 25, 2024) (doing so to pass the Continuing Appropriations and Extensions Act of 2025); 149 CONG. REC. 14279 (2003) (doing so to pass H.R. 2030 to name a post office after Rep. Patsy Mink (D-Haw.)).

²⁸⁹ See 169 CONG. REC. H6961–62 (daily ed. Dec. 14, 2023) (final vote of 310 to 118, with 163 Democrats and 147 Republicans in favor and 73 Republicans and 45 Democrats against).

add border-related measures.²⁹⁰ Members of the minority have also defeated major suspension bills.²⁹¹

There may be political risks to employing such tactics. For example, the majority could seek to mobilize public support against minority actions they describe as dilatory.²⁹² One way the minority could mitigate such risks is to link the deployment of this tactic to concrete and reasonable demands, as Senator Paul did with his demands for pandemic documents from the State Department,²⁹³ as well as asking for hearings on specific topics, testimony from particular witnesses, or subpoenas for documents the majority has declined to seek.

2. Senate Filibuster

Defenders of the Senate filibuster often invoke its constitutional underpinnings, but nothing in the Constitution requires it. It is a creation of the Senate's unicameral rulemaking authority.²⁹⁴ Former President Barack Obama highlighted the filibuster's past uses to advance racist agendas, calling it a "Jim Crow relic,"²⁹⁵ and other commentators have noted its troubling implications for democracy.²⁹⁶ Yet scholars have documented its increased use by minority

²⁹⁰ See David Jordan & David Lerman, *Republicans Defeat Another Rule in House over Spending Deal*, ROLL CALL (Jan. 10, 2024, at 16:38 ET), <https://rollcall.com/2024/01/10/republicans-defeat-another-rule-in-house-over-spending-deal/> [<https://perma.cc/Z3Y8-D3AH>].

²⁹¹ See, e.g., Connor O'Brien, *House Democrats Stun GOP by Sinking Veterans, Intel Bills*, POLITICO (July 24, 2017, at 22:06 ET), <https://www.politico.com/story/2017/07/24/house-republicans-democrats-bills-240914> [<https://perma.cc/67HY-V4DE>].

²⁹² See, e.g., Press Release, Sen. John Thune (R-S.D.), *Democrats' Historic Obstruction Sets Dangerous and Ugly Precedent* (July 28, 2025), <https://www.thune.senate.gov/public/index.cfm/2025/7/thune-democrats-historic-obstruction-sets-dangerous-and-ugly-precedent> [<https://perma.cc/ZU6T-NZNN>]; Alexander Bolton, *Democrats Turn Routine Trump Nominees into Pitched Partisan Battles*, THE HILL (July 29, 2020, at 06:00 ET), <https://thehill.com/homenews/senate/5424468-senate-democrats-trump-nominees/> [<https://perma.cc/958V-SCWM>].

²⁹³ See Sivak, *supra* note 286.

²⁹⁴ See *Examining the Filibuster: History of the Filibuster 1789–2008: Hearing Before the S. Comm. on Rules and Admin.*, 111th Cong. 17 (2010) (testimony of Sarah A. Binder) (debunking historical myth that "the filibuster was an original, constitutional feature of the Senate"). The filibuster was a result of the Senate's decision in 1917 to eliminate the ability of senators to move the previous question and adopt Rule 22 to provide that a senator may invoke cloture and end debate on a measure with a vote of three-fifths of senators. See GREGORY KOGER, *FILIBUSTERING: A POLITICAL HISTORY OF OBSTRUCTION IN THE HOUSE AND SENATE* 7–8 (2010); Gregory Wawro & Eric Schickler, *Where's the Pivot? Obstruction and Lawmaking in the Pre-Cloture Senate*, 48 AM. J. POL. SCI. 758, 760 (2004).

²⁹⁵ Max Cohen, *Obama Calls for End of 'Jim Crow Relic' Filibuster if it Blocks Voting Reforms*, POLITICO (July 30, 2020, at 16:05 ET), <https://www.politico.com/news/2020/07/30/barack-obama-john-lewis-filibuster-388600> [<https://perma.cc/Z5TE-J2P9>] (quoting President Obama's eulogy of Rep. John Lewis (D-Ga.) criticizing use of filibuster to block voting rights legislation).

²⁹⁶ See, e.g., Jonathan Gould, Kenneth A. Shepsle & Matthew C. Stephenson, *Democratizing the Senate from Within*, 13 J. LEGAL ANALYSIS 502, 503 (2021); Josh Chafetz, *The Unconstitutionality of the Filibuster*, 43 CONN. L. REV. 1003, 1015 (2011).

parties and its increasing curtailment by majority parties.²⁹⁷ Its evolution has seen seemingly contradictory trends—becoming easier to invoke procedurally while applying to a narrower scope of measures.²⁹⁸ Despite these criticisms and its recent changes, the filibuster remains one of the most significant tools for the minority to force negotiations with the majority party.²⁹⁹

Under Senate rules, a bill requires a majority to pass, but since there is a right to unlimited debate, senators may delay an eventual vote on a bill indefinitely.³⁰⁰ Although senators used to be required to speak on the Senate floor to maintain a filibuster, today they may indicate their intent to filibuster without engaging in debate.³⁰¹ Before the Senate can take a final vote, there must be a threshold vote to end debate.³⁰² To initiate this vote, the majority leader may seek cloture, which is a cumbersome process that requires a vote of sixty senators.³⁰³

When Senator Cory Booker set the record for the longest speech on the Senate floor on April 1, 2025, it technically may not have been a filibuster because it occurred after a cloture vote.³⁰⁴ His action did not appear intended to extract specific concessions, but rather to mobilize public opinion against perceived abuses by the Trump administration, energize his party, and convert those efforts into electoral benefits.³⁰⁵ House Minority Leader Hakeem Jeffries (D-N.Y.) may have had similar objectives in mind when he later broke the record for the longest House speech by taking advantage of the so-called “magic minute,” an informal custom that allows House leaders to speak for an unlimited amount of time.³⁰⁶

²⁹⁷ See, e.g., Jon R. Bond, *The Contemporary Presidency: Which Presidents Win More or Less Than Expected in Congress? A Biden Update*, 54 PRESIDENTIAL STUD. Q. 271, 273–76 (2024).

²⁹⁸ See Tonja Jacobi & Jeff VanDam, *The Filibuster and Reconciliation: The Future of Majoritarian Lawmaking in the U.S. Senate*, 47 U.C. DAVIS L. REV. 261, 315–16 (2013).

²⁹⁹ See Josh M. Ryan, *Bicameralism and Minority-Party Influence on Legislative Development: Evidence from House Standing Committee Votes*, 45 LEGIS. STUD. Q. 365, 390 (2020) (“[T]he filibuster moderates legislation significantly, even at the earliest stages of development and even under unified party control of the chambers.”); James M. Curry & Frances E. Lee, *Non-Party Government: Bipartisan Lawmaking and Party Power in Congress*, 17 PERSPS. ON POL. 47, 48 (2019) (“[T]he veto points, super-majoritarian requirements, and . . . the counterbalancing strength developed among minority parties, continue to frustrate majority parties.”).

³⁰⁰ See STANDING RULES OF THE SENATE, R. XIX(1)(a), S. DOC. NO. 113-18, at 14.

³⁰¹ See VALERIE HEITSHUSEN, CONG. RSCH. SERV., RL30360, *FILIBUSTER AND CLOTURE IN THE SENATE* 20 (2017).

³⁰² See STANDING RULES OF THE SENATE, R. XXII(2), S. DOC. NO. 113-18, at 15–17.

³⁰³ See *id.*

³⁰⁴ See Scott Bomboy, *Was Cory Booker’s Speech a Filibuster?*, NAT’L CONST. CTR.: CONSTITUTION DAILY BLOG (Apr. 2, 2025), <https://constitutioncenter.org/blog/was-cory-bookers-speech-a-filibuster> [<https://perma.cc/JJ2D-JWKG>].

³⁰⁵ See Tracey Tully, *‘Finally Some Fire’: Cory Booker’s 25-Hour Speech Strikes a Chord at Home*, N.Y. TIMES (Apr. 2, 2025), <https://www.nytimes.com/2025/04/02/nyregion/cory-booker-speech-reactions.html> [<https://perma.cc/LY27-GK2W>].

³⁰⁶ See Nicholas Wu, *Hakeem Jeffries Breaks the House Record for Longest Floor Speech*, POLITICO: INSIDE CONGRESS LIVE (July 3, 2025, at 13:41 ET), <https://www.politico.com/>

There can be several challenges with using the filibuster. One is that minority members may not hold together. On March 12, 2025, Senate Democrats declared that they planned to filibuster a continuing resolution to fund government operations, and Minority Leader Chuck Schumer proclaimed on the Senate floor, “Our caucus is unified.”³⁰⁷ The next day, however, Senator Schumer and other Democratic senators reversed course because they were concerned about damage the Trump administration might cause during a government shutdown.³⁰⁸ However, by waiting to announce his reversal until House Democrats had already voted, Senator Schumer generated a “torrent of frustration and anger.”³⁰⁹ A more extended version of this pattern unfolded several months later when Democratic senators announced again that they would filibuster funding legislation they opposed.³¹⁰ This time, they had specific and clear demands, including extending subsidies under the Affordable Care Act (“ACA”) that were about to expire and which some Republican members supported.³¹¹ This more coordinated effort may have contributed to public opinion shifting to their side.³¹² However, just as President Trump’s polling numbers sank to all-time lows and November off-year elections buoyed Democratic leverage, a small group of minority senators abandoned the effort, resulting in bitter criticism.³¹³ Nevertheless, by holding firm in the longest government

live-updates/2025/07/03/congress/hakeem-jeffries-longest-house-speech-00438933 [https://perma.cc/A3DA-P744].

³⁰⁷ 171 CONG. REC. S1690 (daily ed. Mar. 12, 2025); see Carl Hulse, *Senate Democrats Balk at Funding Extension, Raising the Risk of a Shutdown*, N.Y. TIMES (Mar. 12, 2025), https://www.nytimes.com/2025/03/12/us/politics/government-shutdown-funding-bill-senate-democrats.html [https://perma.cc/WNC9-TAQB].

³⁰⁸ See 171 CONG. REC. S1735–37 (daily ed. Mar. 13, 2025) (statement of Sen. Schumer); Riley Beggin, *Democratic Anger Boils Over as Schumer, 9 Other Dem Senators Vote to Avoid Shutdown*, USA TODAY (Mar. 14, 2025, at 11:24 ET), https://www.usatoday.com/story/news/politics/2025/03/14/democrats-angry-schumer-shutdown/82411894007/ [https://perma.cc/K574-MQN9].

³⁰⁹ Stephen Groves, Matt Brown & Steve Peoples, *Democratic Party Fractures in Government Shutdown Fight, with Anger Running High*, ASSOCIATED PRESS (Mar. 14, 2025, at 23:55 ET), https://apnews.com/article/democrats-congress-chuck-schumer-government-funding-shutdown-43d1acea20c34ad28d848edc08ad6375 [https://perma.cc/BA7U-GUJV].

³¹⁰ See, e.g., John Parkinson, Lauren Peller & Allison Pecorin, *Federal Government Shuts Down After Senate Fails to Pass Funding Measures*, ABC NEWS (Oct. 1, 2025, at 00:10 ET), https://abcnews.com/Politics/congressional-leaders-continue-blame-game-clock-ticks-shutdown/story?id=126083610 [https://perma.cc/G9GY-TXZR].

³¹¹ See, e.g., Sahil Kapur, *Rep. Marjorie Taylor Greene Breaks with the GOP on Obamacare, Calling to Avoid Premium Hikes*, NBC NEWS (Oct. 7, 2025, at 08:19 ET), https://www.nbcnews.com/politics/congress/marjorie-taylor-greene-gop-obamacare-premium-hikes-rcna236068 [https://perma.cc/T39F-FP4T].

³¹² See, e.g., Mike Lillis & Brett Samuels, *Democrats Win Momentum over GOP in Shutdown Fight*, THE HILL (Oct. 10, 2025, at 06:00 ET), https://thehill.com/homenews/house/5545981-shutdown-momentum-democrats/ [https://perma.cc/437B-DEKU].

³¹³ See, e.g., Robert Reich, *Republicans Are Regimented. Democrats Are Undisciplined. Just Look at the Shutdown*, THE GUARDIAN (Nov. 14, 2025, at 06:00 ET), https://www.theguardian.com/commentisfree/2025/nov/14/republicans-democrats-congress-shutdown [https://perma.cc/S8GK-6XD7] (“Democrats finally had bargaining power and they caved.”).

shutdown on record,³¹⁴ Democrats raised the profile of the ACA subsidy issue and laid the groundwork for a successful effort in the House to pass legislation through a discharge petition with the support of a small group of Republicans willing to defy their leadership.³¹⁵

Another challenge is that the filibuster is not available for all matters. As an example of how the application of the filibuster has narrowed over time, it no longer applies when the Senate considers Executive and Judicial Branch nominees.³¹⁶ It also does not apply to budget reconciliation measures under the Congressional Budget and Impoundment Control Act.³¹⁷ Under that process, legislation that seeks to align federal spending and revenue laws with levels adopted in a budget resolution requires only a majority vote to pass the Senate.³¹⁸ Senate Democrats used this process in 2021 to pass President Biden's bipartisan infrastructure package,³¹⁹ and Senate Republicans used it in 2025 to pass President Trump's \$3.4 trillion One Big Beautiful Bill Act.³²⁰ On the latter bill, Senate Republicans were heavily criticized for skirting filibuster and reconciliation rules when they adopted a "current policy" baseline that disregarded trillions of dollars in deficits by adopting the assumption that expiring tax cuts extended indefinitely.³²¹ They created a similarly questionable exception to the filibuster in May 2025 when they struck down the previous approval by the Environmental Protection Agency ("EPA") of California's plan to phase out gasoline powered cars.³²² Although the Congressional Review Act allows Congress to reject agency rules with a simple majority vote, GAO found that the approval of California's plan was not a "rule" under

³¹⁴ Jacob Bogage & Riley Beggin, *Government Shutdown Becomes Longest in U.S. History*, WASH. POST (Nov. 5, 2025), <https://www.washingtonpost.com/business/2025/11/05/longest-government-shutdown-trump-us-history/> [<https://perma.cc/729J-DWLX>].

³¹⁵ See 172 CONG. REC. H213–27 (daily ed. Jan. 8, 2026) (House passing H.R. 1834, as amended by H. Res. 780, by a vote of 224 to 202); see also Lauren Peller & John Parkinson, *9 Republicans Vote with Democrats to Set Up House Vote on 3-Year Extension of ACA Subsidies*, ABC NEWS (Jan. 7, 2026, at 20:45 ET), <https://abcnews.com/Politics/9-republicans-vote-democrats-set-house-vote-3/story?id=128999959> [<https://perma.cc/V35V-LDC7>]; *infra* Part III.C.6 (discussing House discharge petitions generally).

³¹⁶ See Josh Chafetz, *Unprecedented? Judicial Confirmation Battles and the Search for a Usable Past*, 131 HARV. L. REV. 96, 104–10 (2017); HEITSHUSEN, *supra* note 301, at 9.

³¹⁷ See 2 U.S.C. § 641(e)(2).

³¹⁸ See *id.* § 644. See generally BILL HENIFF JR., CONG. RSCH. SERV., RL30862, THE BUDGET RECONCILIATION PROCESS: THE SENATE'S "BYRD RULE" (2022).

³¹⁹ Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021).

³²⁰ One Big Beautiful Bill Act, Pub. L. No. 119-21, 139 Stat. 72 (2025).

³²¹ See Catie Edmondson, *Republicans Plan to Skirt Senate Rules to Push Through More Tax Cuts*, N.Y. TIMES (Apr. 2, 2025), <https://www.nytimes.com/2025/04/02/us/politics/republicans-senate-rules-tax-cuts.html> [<https://perma.cc/E994-8P64>].

³²² See Greg Dotson, *Unbound by Statute: The U.S. Senate, California's Emissions Waivers, and the Congressional Review Act*, YALE J. ON REG.: NOTICE & COMMENT (June 29, 2025); Lisa Friedman & Laurel Rosenhall, *Senate Republicans Kill California's Ban on Gas-Powered Cars*, N.Y. TIMES (May 22, 2025), <https://www.nytimes.com/2025/05/22/climate/senate-republicans-electric-vehicles-california.html> [<https://perma.cc/28NJ-GA4G>].

the Act, so overturning it should have required 60 votes—a conclusion the Senate Parliamentarian supported.³²³

The latest change in filibuster rules came on September 11, 2025, when Republican Majority Leader John Thune (R-S.D.) invoked the so-called “nuclear option” to amend post-cloture debate procedures to allow confirmations of sub-Cabinet level nominees en bloc rather than through the more time-consuming process of debating and voting on each candidate individually.³²⁴ Republicans argued that Democrats were engaged in unprecedented obstruction by forcing cloture votes and full debates for even routine candidates, while Democrats argued that holding up nominees was one of the few ways they could prompt negotiations over President Trump’s withholding of congressionally appropriated funds.³²⁵ President Trump scuttled those negotiations in a social media post calling Democratic demands “political extortion” and telling Minority Leader Schumer to “GO TO HELL!”³²⁶ Senator Thune abandoned negotiations and quickly confirmed 107 nominees with simple majorities in two subsequent votes.³²⁷ President Trump later began demanding that Majority Leader Thune eliminate the filibuster altogether, although his proposal has not been fully embraced to date.³²⁸ These actions highlight one of the most significant challenges with the robust exercise of minority rights: the majority can change the rules.

³²³ See U.S. GOV’T ACCOUNTABILITY OFF., B-337179, OBSERVATIONS REGARDING THE ENVIRONMENTAL PROTECTION AGENCY’S SUBMISSION OF NOTICES OF DECISION ON CLEAN AIR ACT PREEMPTION WAIVERS AS RULES UNDER THE CONGRESSIONAL REVIEW ACT 9 (2025); Sahil Kapur & Frank Thorp V, *Senate Republicans Trigger a Clash over the Filibuster with Vote to Kill Electric Vehicle Rule*, NBC NEWS (May 21, 2025, at 23:42 ET), <https://www.nbcnews.com/politics/congress/senate-republicans-trigger-clash-filibuster-eyeing-vote-nix-electric-v-rcna208061> [<https://perma.cc/MU6J-4T9U>].

³²⁴ See Theodor Meyer, *Republicans Invoke ‘Nuclear Option’ in Push to Change Senate Rules*, WASH. POST (Sep. 11, 2025), <https://www.washingtonpost.com/politics/2025/09/11/republicans-invoke-nuclear-option-push-change-senate-rules/> [<https://perma.cc/BC7U-DBU5>].

³²⁵ Mary Clare Jalonick & Joey Cappelletti, *Senate Heads Home with No Deal to Speed Confirmations as Irate Trump Tells Schumer to ‘Go to Hell’*, ASSOCIATED PRESS (Aug. 3, 2025, at 22:26 ET), <https://apnews.com/article/senate-confirmations-nominations-trump-schumer-thune-905a63d0046319eeb7c266d5e24e70b6> [<https://perma.cc/6DTM-CKK2>].

³²⁶ President Donald J. Trump, @realDonaldTrump, TRUTH SOCIAL (Aug. 2, 2025, at 18:27 ET), <https://truthsocial.com/@realDonaldTrump/posts/114961522912167613> [<https://perma.cc/SE33-UZC9>].

³²⁷ See Al Weaver, *Senate GOP Confirms Batch of 107 Trump Nominees*, THE HILL (Oct. 7, 2025), <https://thehill.com/homenews/senate/5543863-senate-gop-trump-nominees/> [<https://perma.cc/XWN3-Q4MZ>].

³²⁸ See President Donald J. Trump, @realDonaldTrump, TRUTH SOCIAL (Oct. 30, 2025, at 22:36 ET), <https://truthsocial.com/@realDonaldTrump/posts/115466450476422202> [<https://perma.cc/9ZNK-9Q65>]; Timothy R. Williams, *Trump Calls on Republicans to End Filibuster in Shutdown Fight*, N.Y. TIMES (Oct. 31, 2025), <https://www.nytimes.com/2025/10/31/us/politics/trump-filibuster-shutdown.html> [<https://perma.cc/5W2F-W399>].

3. Motion to Adjourn

Any member may move to adjourn proceedings in committees or in either house.³²⁹ Because this motion has a constitutional foundation, it generally takes precedence over other parliamentary motions and must be voted on immediately without debate or other intervening business.³³⁰ There are some restrictions on when a motion to adjourn may be offered: for example, it is not in order during an ongoing vote.³³¹ Given the privileged nature of the motion and its requirement for an immediate response, minority members can use it to halt ongoing proceedings if they can garner more votes than the majority.

One practical reason this tactic is sometimes successful is because during an average legislative day, members may be scattered across the Capitol, shuttling between simultaneous committee hearings and markups, intervening floor votes, constituent meetings, press conferences, and fundraisers. An observer at a typical congressional hearing may see members coming and going from the room to give statements or question witnesses, and it is not uncommon to see only a handful of members at an otherwise empty dais. Committee chairs generally have authority to “roll” votes to a set time so all committee members have notice about when they will happen,³³² but because of its status as a privileged motion, a motion to adjourn may not be rolled to a later time.³³³ A motion to adjourn made without warning can pose serious challenges for the majority if minority members are organized to show up at once. In 2019, for example, Republicans successfully adjourned a House Natural Resources Committee subcommittee hearing on climate change.³³⁴

As an investigative tactic, members of the minority could threaten to force adjournments unless the majority meets specific and clear demands for additional documents or testimony from other witnesses, and they could withdraw these motions if they obtain concessions. The possibility of repeated motions to adjourn across multiple proceedings could provide additional leverage for negotiations with the majority. However, there are several potential downsides to using this tactic. Minority members may have invited their

³²⁹ See RULES OF THE HOUSE OF REPRESENTATIVES, R. XVI(4)(a), H.R. DOC. NO. 118-187, at 742–43 (2025); STANDING RULES OF THE SENATE, R. XXII(1), S. DOC. NO. 113-18, at 15.

³³⁰ See RULES OF THE HOUSE OF REPRESENTATIVES, R. XVI(4)(b), H.R. DOC. NO. 118-187, at 743 (2025); STANDING RULES OF THE SENATE, R. XXII(1), S. DOC. NO. 113-18, at 15.

³³¹ See HOUSE PRACTICE, *supra* note 135, ch. 1, § 3; RIDDICK’S SENATE PROCEDURE, *supra* note 273, at 7.

³³² See, e.g., COMM. ON H. ADMIN., 119TH CONG., RULES OF THE COMMITTEE ON HOUSE ADMINISTRATION FOR THE 119TH CONGRESS, R. 4(b)(1), at 6 (Comm. Print 2025).

³³³ See HOUSE PRACTICE, *supra* note 135, ch. 1, § 3; RIDDICK’S SENATE PROCEDURE, *supra* note 273, at 16.

³³⁴ See *The Denial Playbook: How Industries Manipulate Science and Policy from Climate Change to Public Health: Hearing Before the Subcomm. on Oversight & Investigations of the H. Comm. on Nat. Res.*, 116th Cong. 9–10 (2019); Juliegrace Brufke, *Republicans Force House Subcommittee to Adjourn During Hearing on Climate Change*, THE HILL (Feb. 26, 2019, at 17:45 ET), <https://thehill.com/homenews/house/431712-republicans-force-house-subcommittee-to-adjourn-during-hearing-on-climate/> [<https://perma.cc/YB7T-K6G2>].

own witnesses to testify, or they may want to take advantage of an opportunity to question Executive Branch witnesses called by the majority, especially if those officials have been unresponsive to requests for information. There also may be a political concern with blowback. For example, the majority could notice the same hearing for a week later, criticize the minority for wasting time and taxpayer resources, or frame the minority's action as obstructive or an attempt to conceal facts.³³⁵

4. Motion to Amend Legislation

When considering legislation, members who support a bill use the amendment process in traditional ways to improve legislative language, refine its application, or clarify congressional intent. Conversely, when members oppose a bill, they use amendments to fundamentally alter its provisions and sometimes offer “poison pills” to try to defeat it.³³⁶ Minority members also may use amendments to force the majority to take politically difficult votes or call attention to their own priorities through messaging amendments. For example, during a markup of a majority budget bill in the House Judiciary Committee in 2025, the minority offered thirty amendments highlighting a wide range of perceived Trump administration abuses.³³⁷ Many were clearly intended to place majority members in tough political positions.³³⁸ In one case, Chairman Jim Jordan (R-Ohio) offered his own amendment to preempt a minority amendment that would have garnered bipartisan support.³³⁹

³³⁵ See, e.g., Congressman TJ Cox (@RepTjCox), X (Feb. 26, 2019, at 15:48 ET), <https://x.com/RepTjCox/status/1100497801446912000> [<https://perma.cc/W6FJ-WFEC>] (posting that Republicans in the minority “couldn’t have a more ironic response to a hearing on climate [change] denialism” than walking out of the hearing).

³³⁶ See, e.g., *Executive Business Meeting Before the S. Comm. on the Judiciary*, 117th Cong. (Sep. 8, 2022) (Sen. Ted Cruz (R-Tex.), during debate on bipartisan legislation to give local news organizations authority to collectively bargain with technology companies, offering a surprise amendment to retain antitrust restrictions when negotiations involve content moderation, and causing Sen. John Kennedy (R-La.) to vote for the amendment and thereby defeat the bill); Josh Sisco & Brendan Bordelon, *Ted Cruz Amendment Blows Up Journalism Antitrust Bill*, POLITICO (Sep. 8, 2022, at 13:57 ET), <https://www.politico.com/news/2022/09/08/content-moderation-blows-up-journalism-antitrust-bill-00055556> [<https://perma.cc/47Q6-XUS2>] (describing same).

³³⁷ See *Business Meeting Before the H. Comm. on the Judiciary*, 119th Cong. (Apr. 30, 2025) (including amendments to prohibit Immigration and Customs Enforcement from deporting U.S. citizens or conducting raids at houses of worship).

³³⁸ See Press Release, Rep. Jamie Raskin, Ranking Member, H. Comm. on the Judiciary, House Judiciary Republicans Rubberstamp Trump’s Lawless Assault on America, Spend \$81 Billion in Taxpayer Funds to Hand Trump More Unchecked Power (May 1, 2025), <https://democrats-judiciary.house.gov/media-center/press-releases/house-judiciary-republicans-rubberstamp-trump-s-lawless-assault-on-america-spend-81-billion-in-taxpayer-funds-to-hand-trump-more-unchecked-power> [<https://perma.cc/3F6Q-QP3S>] (noting that “Republicans remained completely silent and refused to provide any justification” for their votes during the nearly nine-hour markup).

³³⁹ See *Business Meeting Before the H. Comm. on the Judiciary*, 119th Cong. (Apr. 30, 2025).

Chairman Jordan's amendment removed a provision that had been included in the majority's bill just days earlier.³⁴⁰

Minority members can also use amendments for investigative purposes. For example, amendments can require studies or reports from GAO, agencies, inspectors general, and others.³⁴¹ These amendments are often viewed as more benign and more likely to pass because they require no changes to existing policy.³⁴² In addition, they are sometimes used as fallbacks when negotiations stall and deals cannot be reached but members still want to demonstrate progress.³⁴³ Minority members can also add amendments to appropriations bills to prohibit restrictions on congressional oversight activities and to create incentives for compliance by agencies that defy demands for information.³⁴⁴

There are differences between Senate and House rules regarding amendments. There is generally no restriction on senators offering amendments on the floor and, unlike in the House, amendments generally need not be germane to underlying matters.³⁴⁵ As a result, the Senate typically decides the number of amendments to be considered through negotiation and agreement.³⁴⁶ In contrast, the House Rules Committee strictly controls the parameters that

³⁴⁰ See Jody Godoy, *US House Panel Drops Bid to Remove FTC's Antitrust Authority*, REUTERS (Apr. 30, 2025, at 16:28 ET), <https://www.reuters.com/world/us/us-house-panel-drops-bid-remove-ftcs-antitrust-authority-2025-04-30/> [<https://perma.cc/8Q9Z-DJAX>].

³⁴¹ See *supra* Part III.B.2.

³⁴² See, e.g., 171 CONG. REC. H2129–30 (daily ed. May 19, 2025) (adopting by voice vote H.R. 1823, requiring GAO to report on causes of budget shortfalls at Veterans Benefits Administration).

³⁴³ The annual defense authorization bill is notorious for including such provisions. See, e.g., National Defense Authorization Act for Fiscal Year 2025, Pub. L. No. 118-159, § 1606, 138 Stat. 1773, 2162 (requiring GAO report on Global Positioning System modernization); *id.* § 5612, 138 Stat. at 2460–61 (requiring GAO report on information sharing by the Homeland Security Information Network); *id.* § 6801, 138 Stat. at 2515–16 (requiring GAO report on All-Domain Anomaly Resolution Office).

³⁴⁴ See, e.g., Kevin M. Stack & Michael P. Vandenberg, *Oversight Riders*, 97 NOTRE DAME L. REV. 127, 132 (2021) (describing such amendments as “oversight riders”); *Senate Passes \$901 Billion Defense Bill That Pushes Hegseth for Boat Strike Video*, NPR (Dec. 17, 2025, at 13:28 ET), <https://www.npr.org/2025/12/17/g-s1-102651/senate-national-defense-authorization-act-hegseth-boat-strike-video> [<https://perma.cc/DEK2-TTFJ>] (describing National Defense Authorization Act provision to withhold one quarter of the Defense Secretary's travel budget until he produces video of military strikes on alleged drug boats near Venezuela).

³⁴⁵ See Sarah Binder, *A Game Plan for Senate Democrats*, N.Y. TIMES (Feb. 10, 2017), <https://www.nytimes.com/2017/02/10/opinion/a-game-plan-for-senate-democrats.html> [<https://perma.cc/SPK7-NVH4>] (advocating Democrats' strategic use of the Senate's more flexible debate and amendment procedures, in contrast to the House, to impede majority action). However, the minority cannot achieve what essentially would be a talking filibuster by offering unlimited amendments. This is because the Senate majority leader has the right to priority recognition in between other senators, during which a motion for cloture could be offered. See CHRISTOPHER M. DAVIS, CONG. RSCH. SERV., RS20668, HOW MEASURES ARE BROUGHT TO THE SENATE FLOOR: A BRIEF INTRODUCTION 1 (2019).

³⁴⁶ See VALERIE HEITSHUSEN, CONG. RSCH. SERV., 96-548, THE LEGISLATIVE PROCESS ON THE SENATE FLOOR: AN INTRODUCTION 6–7 (2019). In the context of budget reconciliation, senators have offered dozens of amendments in what is known as a “vote-o-rama.” See, e.g., 171 CONG. REC. S4048–89 (daily ed. June 30, 2025) (setting record for more than 40 amendments during consideration of H.R. 1).

govern consideration of legislation on the floor and typically limits the number and content of amendments.³⁴⁷ Because the Rules Committee is stacked with far more majority members than minority members, it has been allowing decreasing numbers of minority amendments to be considered on the floor over the past several decades.³⁴⁸ Taking this trend to new levels, in 2025, the Republican House majority broke the record for the most “closed rules” ever, meaning the House considered more bills with no amendments allowed on the floor than in any previous year in history.³⁴⁹

5. Motion to Recommit

Under House rules, the minority party may offer a motion to recommit (“MTR”) prior to final passage on the floor. An MTR “recommits” a measure back to the committee of jurisdiction.³⁵⁰ The motion in its traditional form was accompanied by instructions for the committee to take certain action.³⁵¹ As with any minority motions, MTRs rarely pass, but the minority can craft instructions that might compel enough majority members to vote in favor of the motion and delay or defeat the underlying bill. In 2019, the Republican minority successfully used an MTR to defeat legislation that would have required gun background checks by offering an MTR instructing the Judiciary Committee to require that Immigration and Customs Enforcement be notified when undocumented immigrants try to buy firearms.³⁵² The motion garnered

³⁴⁷ See RULES OF THE HOUSE OF REPRESENTATIVES, R. X(1)(o), H.R. DOC. NO. 118-187, at 501 (2025); CHRISTOPHER M. DAVIS & ELIZABETH RYBICKI, CONG. RSCH. SERV., RL30244, THE COMMITTEE MARKUP PROCESS IN THE HOUSE OF REPRESENTATIVES 11–13 (2025) (noting also that the majority can end committee debate in the House through a motion to order the previous question if base text is an amendment in the nature of a substitute).

³⁴⁸ See K. Sophie Will, *Influence Shrinks as House Limits Members’ Power to Change Bills*, BLOOMBERG GOV’T (Jan. 9, 2026, at 05:30 ET), <https://news.bgov.com/bloomberg-government-news/influence-shrinks-as-house-limits-members-power-to-change-bills> [<https://perma.cc/VY5T-DXDB>] (documenting how the Rules Committee has been limiting floor votes on minority amendments since the 112th Congress); Mark Strand & Timothy Lang, *Open House: How the House of Representatives Can Reinvigorate the Amendment Process*, CONG. INST., <https://www.congressionalinstitute.org/open-house-how-the-house-of-representatives-can-reinvigorate-the-amendment-process/> [<https://perma.cc/V764-BLGE>] (compiling Rules Committee data indicating increased use of closed rules with no amendments since the 104th Congress).

³⁴⁹ See *Special Rules*, H. COMM. ON RULES, <https://rules.house.gov/legislation/special-rules> [<https://perma.cc/LSV4-AR96>] (last visited Mar. 12, 2026). This trend is even more stark considering that Speaker Johnson adjourned the House in 2025 and allowed no votes for forty-three days during the longest government shutdown ever. See Catie Edmondson & Zolan Kanno-Youngs, *Trump Signs Bill Ending Longest Shutdown*, N.Y. TIMES (Nov. 12, 2025), <https://www.nytimes.com/2025/11/12/us/politics/government-shutdown-vote-trump.html> [<https://perma.cc/5EVE-LDXP>]. For a discussion of the theoretical and institutional implications of closed rules, see generally Michael Doran, *The Closed Rule*, 59 EMORY L.J. 1363 (2010).

³⁵⁰ RULES OF THE HOUSE OF REPRESENTATIVES, R. XIX(2)(a), H.R. DOC. NO. 118-187, at 860 (2025).

³⁵¹ SARAH B. SOLOMON, CONG. RSCH. SERV., R48566, THE MOTION TO RECOMMIT IN THE HOUSE 4 (2025).

³⁵² See 165 CONG. REC. H2260–62 (daily ed. Feb. 27, 2019) (approving the motion to recommit by a vote of 220 to 209).

support from twenty-six Democrats in swing districts and caused greater fissures among majority Democrats.³⁵³

The minority also may use MTRs to highlight when the majority has not taken sufficient investigative steps. For example, when Republicans on the House Oversight Committee were investigating whether ATF knowingly allowed firearms to “walk” into Mexico as part of Operation Fast and Furious, Democrats in the minority were initially supportive of the investigation, but when the majority targeted Attorney General Eric Holder without evidence that he was aware of the abuses, Democrats called for the majority to obtain testimony from the ATF Director, who had yet to testify at a public hearing.³⁵⁴ When the majority refused and moved to hold the Attorney General in contempt on the House floor, Representative John Dingell—the “dean” of the House (its longest serving member), a renowned congressional investigator, and a member of the National Rifle Association³⁵⁵—offered an MTR to refer the resolution back to the Committee to conduct the investigation that had not yet been done.³⁵⁶ Although the motion failed, it contributed to public opinion coalescing against the majority’s attack on Attorney General Holder.³⁵⁷ When Democrats were in the majority in the House in 2021, they amended House rules to eliminate the ability of minority members to include specific instructions with their MTRs that historically gave them their political teeth.³⁵⁸ Nevertheless, minority members have continued to use MTRs and, in some cases, have been successful.³⁵⁹

Unlike in the House, senators have authority to offer substantive amendments on the floor and do not have the equivalent of the House Rules Committee to act as gatekeeper. As a result, although they have the right to offer MTRs, they rarely do.³⁶⁰ One occasion when senators offer MTRs is during the budget reconciliation process because the rules governing which

³⁵³ See Ashley Killough, *House Democrats Split over Republicans’ Use of ‘Motion to Recommit,’* CNN (Mar. 1, 2019, at 13:20 ET), <https://www.cnn.com/2019/03/01/politics/house-democrats-procedural-tools> [<https://perma.cc/HC63-QA6A>].

³⁵⁴ See Letter from Rep. Elijah E. Cummings, Ranking Member, to Rep. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov’t Reform (Oct. 28, 2011).

³⁵⁵ See generally JOHN D. DINGELL, JR., *THE DEAN: THE BEST SEAT IN THE HOUSE* (2018).

³⁵⁶ 158 CONG. REC. H10253, 10512 (2012) (Rep. John Dingell raising a motion to recommit H. Res. 706).

³⁵⁷ See, e.g., Editorial, *A Pointless Partisan Fight*, N.Y. TIMES (June 20, 2012), <https://www.nytimes.com/2012/06/21/opinion/a-pointless-partisan-fight.html> [<https://perma.cc/XN72-38FZ>].

³⁵⁸ See RULES OF THE HOUSE OF REPRESENTATIVES, R. XIX(2)(a), H.R. DOC. NO. 118-187, at 860 (2025) (“[I]t shall be in order to move that the House recommit (or commit, as the case may be) the measure, *without instructions*, to a standing or select committee.”) (emphasis added).

³⁵⁹ See, e.g., 170 CONG. REC. H2814–16 (daily ed. May 1, 2024) (adopting motion to recommit H.R. 6285).

³⁶⁰ See STANDING RULES OF THE SENATE, R. XV(1)(a), S. DOC. NO. 113-18, at 10 (2013); *id.* R. XXII(1), S. DOC. NO. 113-18, at 15; see also Jennifer Hayes Clark, *Minority Party Strategies and the Evolution of the Motion to Recommit in the U.S. House*, in *PARTY AND PROCEDURE IN THE UNITED STATES CONGRESS* 89 (Jacob R. Straus ed., 2012) (summarizing scholarship hailing the MTR “as an important right of the House minority party, which lacks the institutional tools available to its counterpart in the U.S. Senate”).

amendments are in order are much stricter.³⁶¹ MTRs allow senators to make their rhetorical points in MTR instructions without running afoul of reconciliation amendment rules.³⁶²

6. House Discharge Petition

In the House, any member may file a petition to require a floor vote on a measure that a committee of jurisdiction has declined to take up for more than thirty legislative days.³⁶³ Because a majority of House members must sign a discharge petition to give it effect, the minority can succeed only if some majority members support the effort. Even if there is little likelihood that a minority discharge petition will pass, the existence of the petition can be used to pressure sympathetic or vulnerable majority members to join.³⁶⁴ For these reasons, the majority disfavors minority discharge petitions and, in some cases, has chastised majority members for joining them.³⁶⁵ In addition, scholars point out that a rule change in 1993 that makes the identities of signatories public as they join discharge petitions may decrease their appetite to do so and, in turn, the likelihood of obtaining 218 signatures.³⁶⁶ The majority party also has used procedural maneuvers to prevent bipartisan discharge petitions from coming to the floor despite their support. For example, when Representatives Brittany Petterson (D-Colo.) and Anna Paulina Luna (R-Fla.) obtained the requisite number of signatures on a discharge petition to require a floor vote on a measure to allow proxy voting for new parent members, the House adopted a subsequent rule tabling the underlying matter, meaning that

³⁶¹ See Congressional Budget and Impoundment Control Act of 1974, § 313, 2 U.S.C. § 644; STAFF OF S. COMM. ON THE BUDGET, 103RD CONG., BUDGET PROCESS LAW ANNOTATED 198–202 (Comm. Print 1993).

³⁶² See 171 CONG. REC. S4048–89 (daily ed. June 30, 2025) (indicating that, of dozens of amendments offered by the minority during consideration of H.R. 1 under budget reconciliation process, most were motions to recommit).

³⁶³ RULES OF THE HOUSE OF REPRESENTATIVES, R. XV(2), H.R. DOC. NO. 118-187, at 721–27 (2025).

³⁶⁴ See Nicholas Wu, *House Democrats Are Launching a Longshot Procedural Move to Prevent Safety Net Cuts*, POLITICO: INSIDE CONGRESS LIVE (May 6, 2025, at 13:34 ET), <https://www.politico.com/live-updates/2025/05/06/congress/democrats-discharge-petition-medicaid-snap-00331060> [<https://perma.cc/Y9R8-AHWF>].

³⁶⁵ See, e.g., Rep. Virginia Foxx (R-N.C.), *Discharge Petitions Are Tools of the Minority, Not the Majority*, U.S. CONGRESSWOMAN VIRGINIA FOXX: NEWS (Mar. 28, 2025), <https://foxx.house.gov/news/documentsingle.aspx?DocumentID=400160> [<https://perma.cc/KYH9-D5T8>] (criticizing Republican colleagues for using discharge petitions and leaving the majority “with a black eye and a broken nose”).

³⁶⁶ See, e.g., Sarah A. Binder, *Don’t Count on the House Discharge Rule to Raise the Debt Limit*, BROOKINGS (May 9, 2023), <https://www.brookings.edu/articles/dont-count-on-the-house-discharge-rule-to-raise-the-debt-limit/> [<https://perma.cc/3W8L-WTDF>] (summarizing scholarship indicating that majority members have been more reluctant to sign discharge petitions since the rule change); Philip Wallach & Priscilla Goh, *The Discharge Petition: Its History and Role in the 118th Congress*, AMERICAN ENTERPRISE INSTITUTE (Apr. 29, 2024), <https://www.aei.org/articles/the-discharge-petition-its-history-and-role-in-the-118th-congress/> [<https://perma.cc/2KN3-E4R9>] (summarizing 1993 rule change and its effects).

some Republican members who signed the discharge petition also voted for the rule to table it.³⁶⁷

The minority can also use discharge petitions as part of an investigative strategy to seek documents or testimony. The 2025 effort to obtain the full Justice Department file on Jeffrey Epstein illustrates the potential benefits and challenges with this approach. Based on President Trump's campaign promises to release the Epstein files if elected, members across the political spectrum were dismayed when Attorney General Pam Bondi and FBI Director Kash Patel began redacting and withholding information from Congress.³⁶⁸ A bipartisan bill was introduced to require the Justice Department to produce the information within thirty days of the bill's enactment, but the Judiciary Committee did not consider it.³⁶⁹ Representatives Thomas Massie (R-Ky.) and Ro Khanna (D-Cal.) then introduced "perhaps the most famous discharge petition in American history."³⁷⁰ Although only a handful of Republicans initially joined, several special elections to fill vacant seats resulted in Democratic victories that helped the petition obtain the 218 signatures needed to go into effect, just as the government shutdown ended.³⁷¹ At the same time, Epstein's estate released a trove of texts explicitly asserting President Trump's knowledge of Epstein's activities, helping the petition's supporters garner enough political support to prevent Republican House leaders from tabling the motion in the Rules Committee, as they had done with other discharge petitions.³⁷² Although President Trump tried unsuccessfully to prevent members

³⁶⁷ H. Res. 294, 119th Cong. § 6 (2025); see Nicholas Wu & Meredith Lee Hill, *House GOP Leaders Move to Kill Proxy-Voting Effort*, POLITICO: INSIDE CONGRESS LIVE (Apr. 1, 2025, at 10:23 ET), <https://www.politico.com/live-updates/2025/04/01/congress/house-proxy-voting-anna-paulina-luna-00262949> [<https://perma.cc/HJX8-UMWC>].

³⁶⁸ See, e.g., Jesus Mesa, *Donald Trump Suggests He'll Release Jeffrey Epstein 'Client List' If Elected*, NEWSWEEK (Sep. 3, 2024, at 15:15 ET), <https://www.newsweek.com/donald-trump-lex-fridman-podcast-jeffrey-epstein-list-1948170> [<https://perma.cc/WT4T-9QMC>]; Jason Leopold, *The FBI Redacted Trump's Name in the Epstein Files*, BLOOMBERG (Aug. 1, 2025, at 10:35 ET), <https://www.bloomberg.com/news/newsletters/2025-08-01/epstein-files-trump-s-name-was-redacted-by-the-fbi> [<https://perma.cc/345H-S79B>]; Will Steakin, *Trump's Effort to Quell MAGA Revolt over Epstein Files Seems to Add Fuel to the Fire*, ABC NEWS (July 14, 2025, at 17:51 ET), <https://abcnews.go.com/Politics/trumps-effort-quell-maga-revolt-epstein-files-add/story?id=123737775> [<https://perma.cc/9XTP-AXEA>].

³⁶⁹ See The Epstein Files Transparency Act, Pub. L. No. 119-38, 139 Stat. 656 (2025).

³⁷⁰ 171 Cong. Rec. H4726 (daily ed. Nov. 18, 2025) (floor statement of Rep. Jamie Raskin).

³⁷¹ H. Res. 581, 119th Cong. (2025) (as reported by Clerk of the U.S. House of Representatives, Sep. 2, 2025), <https://clerk.house.gov/DischargePetition/2025090209> [<https://perma.cc/7GPR-Y9DD>] (listing signatories to Motion to Discharge a Committee from the Consideration of a Resolution); see also Rep. Grijalva Signs Petition on Epstein Files, Giving It the 218th Signature Needed to Force House Vote, ASSOCIATED PRESS (Nov. 13, 2025), <https://www.pbs.org/newshour/politics/rep-grijalva-signs-petition-on-epstein-files-giving-it-the-218th-signature-needed-to-force-house-vote> [<https://perma.cc/PNX8-QZMP>]; Caitlin Sievers, *Johnson Sets Record Refusing to Swear in Adelita Grijalva for 36 Days After She Won Election*, AZ MIRROR (Oct. 29, 2025, at 3:51 ET), <https://azmirror.com/briefs/johnson-sets-record-refusing-to-swear-in-adelita-grijalva-for-36-days-after-she-won-election/> [<https://perma.cc/C85Y-RTSF>].

³⁷² See Hailey Fuchs, *Jeffrey Epstein, in Newly Released Email, Says Trump 'Knew About the Girls,'* POLITICO (Nov. 12, 2025, at 14:49 ET), <https://www.politico.com/news/2025/11/12/jeffrey-epstein-donald-trump-emails-00647447> [<https://perma.cc/Z9AP-8QZD>].

from joining the petition, he abruptly reversed course after reports that up to one hundred Republican members might vote for the measure, instead posting on social media that they should support it.³⁷³ The legislation overwhelmingly passed the House and Senate in quick succession, and the President signed it.³⁷⁴

The Epstein discharge petition was extraordinary because of the confluence of various political and other events that resulted in overwhelming support for the underlying legislation, including among members of the House and Senate majorities. This is certainly not the case for all discharge petitions. In addition, a significant challenge for discharge petitions normally is that the underlying legislation that is being discharged from committee is subject to the requirements of bicameralism and presentment. In other words, even if supporters succeed in one house, there is no guarantee they will succeed in the other or that the President will sign the legislation rather than veto it. Moreover, if the underlying legislation does not create a specific enforcement mechanism, the House or Senate may have to vote again to compel compliance. For discharge petitions relating specifically to investigative demands, however, there is an alternative: discharging a unicameral resolution authorizing contempt proceedings. For example, the House Oversight Committee issued a subpoena to Attorney General Bondi demanding the complete Epstein file, so a resolution could be introduced in the House concluding that she has failed to comply, finding her in contempt of the House, and authorizing criminal and civil action.³⁷⁵ If the Oversight Committee declined to take up that contempt resolution, a discharge petition could be introduced to bring the resolution to the floor for a vote, and once passed, it would not need approval from the Senate or President Trump to go into effect.³⁷⁶

* * *

Apart from a handful of so-called hard powers minority members may use to demand and obtain specific information, such as inspecting immigration facilities, there are far more rules that allow minority members to raise

³⁷³ Compare Annie Karni, Devlin Barrett & Michael Gold, *Trump Ramps Up Pressure on G.O.P. to Thwart Epstein Vote*, N.Y. TIMES (Nov. 12, 2025), <https://www.nytimes.com/2025/11/12/us/politics/trump-epstein-vote-boebert.html> [<https://perma.cc/5V2D-7WSX>] (reporting that President Trump attempted to block the release of the Epstein files), with Ashley Ahn, *Trump Says House Republicans Should Vote to Release Epstein Files*, N.Y. TIMES (Nov. 16, 2025), <https://www.nytimes.com/2025/11/16/us/politics/trump-epstein-files-release-vote.html> [<https://perma.cc/5BA7-YWSR>] (reporting that President Trump ultimately supported the release of the Epstein files).

³⁷⁴ As a technical matter, after the discharge petition obtained sufficient signatures, House majority leaders called up the underlying legislation pursuant to a suspension of the rules. 171 Cong. Rec. H4733 (daily ed. Nov. 18, 2025) (House vote of 427 to 1); 171 Cong. Rec. S8211–12 (daily ed. Nov. 19, 2025) (Senate vote by unanimous consent); Epstein Files Transparency Act, Pub. L. No. 119-38, 139 Stat. 656 (2025).

³⁷⁵ Subpoena from H. Comm. on Oversight and Gov't Reform to Pamela Bondi, Att'y Gen. of the United States (Aug. 19, 2025).

³⁷⁶ See *supra* Part III.A.3 (discussing Epstein subpoena and noting majority members who voted in favor).

their investigative demands and slow legislative action as leverage. However, these ultimately rely on convincing at least some majority members to join their ranks. For example, the Senate has a “two-hour rule” that allows any senator to object to committee meetings continuing more than two hours after the full Senate convenes, with certain exceptions.³⁷⁷ Members in both houses also can move to postpone hearings to highlight minority concerns.³⁷⁸ Even further along this spectrum of hard to soft powers are tactics the minority can employ that are not referenced in rules or statutes, which I turn to next.

IV. MINORITY INVESTIGATIVE POWERS BEYOND THE RULES

Minority members can use many tools that do not rely on congressional rules or federal statutes specific to investigative rights and do not necessarily depend on leveraging other parliamentary tactics. Below I discuss several non-rule-based methods for members to collect information and communicate with the public about their findings.

A. *Obtaining Information from Alternative Sources*

Minority members may seek information from any sources that are willing to provide it voluntarily, without the need for subpoenas. Obtaining an initial set of information can often lead to additional investigative avenues to pursue, create pressure on the majority to take its own investigative steps, and cause the Executive Branch and other targets to respond with more information.

³⁷⁷ STANDING RULES OF THE SENATE, R. XXVI, S. DOC. NO. 113-18, at 32–33 (2013); RIDDICK’S SENATE PROCEDURE, *supra* note 273, at 406 (noting that subsequent action, such as reporting a bill or nomination, would be considered “null, void, and of no effect”); *see also* 164 Cong. Rec. S6036–37 (Sep. 5, 2018) (Minority Leader Chuck Schumer objecting to unanimous consent to waive two-hour rule for Judiciary Committee confirmation hearing of Supreme Court nominee Brett Kavanaugh); Alexander Bolton, *Democrats Force Senate to Adjourn to Protest Kavanaugh*, THE HILL (Sep. 5, 2018, at 13:49 ET), <https://thehill.com/homenews/senate/405190-democrats-force-senate-to-adjourn-to-protest-kavanaugh/> [<https://perma.cc/YT6Q-SGV2>]; *Executive Business Meeting Before the S. Comm. on the Judiciary*, 118th Cong. (2023) (minority invoking two-hour rule at business meeting to consider subpoenas for Leonard Leo and Harlan Crow); Katherine Tully-McManus, *Senate Judiciary Issues Subpoenas to Leo, Crow in SCOTUS Ethics Probe as Republicans Boycott*, POLITICO (Nov. 30, 2023, at 13:10 ET), <https://www.politico.com/live-updates/2023/11/30/congress/senate-judiciary-subpoenas-nominees-meltdown-00129300> [<https://perma.cc/3MY6-ZX8G>].

³⁷⁸ *See, e.g., Hearing with Michael Cohen, Former Attorney to President Donald Trump: Hearing Before the H. Comm. on Oversight & Reform*, 116th Cong. 1–5 (2019) (motion by Rep. Mark Meadows to postpone hearing); *Republican Tries to Shut Down Cohen Testimony Before It Begins*, NEWS CTR. ME. (Feb. 27, 2019, at 18:53 ET), <https://www.newscentermaine.com/article/news/republicans-try-to-shut-down-cohen-testimony-before-it-begins/507-390ae212-75bd-4f9d-accf-da514544095c> [<https://perma.cc/4C7G-8KS2>].

1. Non-Public Sources

By virtue of their positions, members of Congress may be able to obtain a significant amount of non-public information to serve their investigative goals. These sources may be parties who have been wronged in some way and are willing to provide information to members who will act on their behalf. After the Iraq War, for example, the Bush administration began using Iraqi funds to pay Halliburton, Vice President Dick Cheney's former company, to import gasoline into Iraq at exorbitantly high prices.³⁷⁹ Iraq's new leaders could not fathom this waste of money and, to highlight their concerns, they provided Representative Henry Waxman, then Ranking Member of the House Oversight Committee, with their own receipts showing far lower prices they had been paying to import gasoline.³⁸⁰

Minority members can also consult experts who are willing to speak with them on topics in their field. In the case of Iraqi gasoline imports, Representative Waxman consulted experts who analyzed Halliburton's prices and confirmed that they were excessive based on industry standards.³⁸¹ Representative Waxman also accessed government databases to review Halliburton's contracts with the administration and worked with CRS to survey subscription-based industry reports.³⁸² Representatives Waxman and Dingell, then Ranking Member of the House Energy and Commerce Committee, compiled this information in a letter to OMB that received major press attention.³⁸³ None of these actions involved the exercise of minority rights referenced in statutes or House rules, yet they forced the administration to respond by disclosing information³⁸⁴ and terminating Halliburton's gasoline imports.³⁸⁵

³⁷⁹ Letter from Reps. Henry A. Waxman, Ranking Member, H. Comm. on Gov't Reform, and John D. Dingell, Ranking Member, H. Comm. on Energy & Com., to Joshua Bolten, Dir., Office of Mgmt. & Budget 1 (Oct. 15, 2003).

³⁸⁰ See Letter from Reps. Henry A. Waxman, Ranking Member, H. Comm. on Gov't Reform, and John D. Dingell, Ranking Member, H. Comm. on Energy & Com., to Robert B. Flowers, Lt. Gen., U.S. Army Corps of Eng'rs 4 (Oct. 21, 2003) (citing Letter from Mohammed M. Al-Jibouri, Gen. Manager, State Oil Mktg. Org., to Minority Staff, H. Comm. on Gov't Reform (Oct. 16, 2003)).

³⁸¹ Letter from Reps. Henry A. Waxman and John D. Dingell to Joshua Bolten, *supra* note 379, at 4 (citing telephone conversation between Gordon Schremp, Senior Fuels Specialist, Cal. Energy Comm'n, and Minority Staff, H. Comm. on Gov't Reform (Oct. 14, 2003), and telephone conversation between Philip K. Verleger, Jr., President, PKVerleger LLC and Principal, Brattle Group, and Minority Staff, H. Comm. on Gov't Reform (Oct. 10, 2003)).

³⁸² See *id.* at 4 n.9.

³⁸³ See *id.*; see, e.g., Jackie Spinner, *Price of Gasoline for Iraq Questioned*, WASH. POST (Oct. 15, 2003), <https://www.washingtonpost.com/archive/politics/2003/10/18/army-halliburton-deny-iraq-fuel-price-allegation/ff84026d-f4d9-4dee-babc-318ce4dbc93c/> [https://perma.cc/36VL-JDSC].

³⁸⁴ Letter from Reps. Henry A. Waxman, Ranking Member, H. Comm. on Gov't Reform, and John D. Dingell, Ranking Member, H. Comm. on Energy & Com., to Condoleezza Rice, Assistant to the President for Nat'l Sec. 1 (Oct. 29, 2003) (reporting information obtained from the Army Corps of Engineers).

³⁸⁵ Letter from Reps. Henry A. Waxman, Ranking Member, H. Comm. on Gov't Reform, and John D. Dingell, Ranking Member, H. Comm. on Energy & Com., to Robert B. Flowers,

This snowballing effect continued as Representatives Waxman and Dingell used information they obtained to refer the case to the Pentagon Inspector General,³⁸⁶ after which auditors identified \$61 million in overcharges and made their own referral for criminal investigation.³⁸⁷ Representative Waxman then began obtaining leaked documents from confidential sources, including an internal Pentagon audit showing overcharges by Halliburton and efforts to conceal them from Congress.³⁸⁸ He then used this information to call on the majority to hold hearings and subpoena additional records.³⁸⁹ Representative Waxman continued to press this investigation for years, including through bicameral letters and reports.³⁹⁰

Minority members can also do their own surveys to collect data and report results.³⁹¹ In addition, they can obtain information from constituents, communities, and local and state governmental entities that share their aims. For example, minority members investigating dangerously high lead levels in drinking water in Flint, Michigan spoke with families and local officials in the region who reported that Governor Rick Snyder (R-Mich.) and his administration failed to protect or inform them in a timely manner of the dangers they faced.³⁹² Minority members then used this information to make a successful case that the majority should call the governor to testify before the House Oversight Committee, where he was pressed to resign.³⁹³

Lt. Gen., U.S. Army Corps of Eng'rs 1 (Nov. 5, 2003) (describing pending transfer to Defense Energy Support Center).

³⁸⁶ Letter from Sen. Joseph Lieberman, Ranking Member, S. Comm. on Gov't Affs., Rep. Henry A. Waxman, Ranking Member, H. Comm. on Gov't Reform, and Rep. John D. Dingell, Ranking Member, H. Comm. on Energy & Com., to Joseph E. Schmitz, Inspector Gen., Dep't of Def. (Nov. 25, 2003).

³⁸⁷ See *id.*; see also Richard A. Oppel, Jr., *Pentagon Opens Criminal Inquiry of Halliburton Pricing*, N.Y. TIMES (Feb. 24, 2004), <https://www.nytimes.com/2004/02/24/world/pentagon-opens-criminal-inquiry-of-halliburton-pricing.html> [<https://perma.cc/D9HR-D3KJ>].

³⁸⁸ Letter from Rep. Henry A. Waxman, Ranking Member, H. Comm. on Gov't Reform, to Rep. Christopher Shays, Chairman, Subcomm. on Nat'l Sec., Emerging Threats & Int'l Rels. 1–2 (Mar. 15, 2005) (revealing internal audits conducted by the Defense Contract Audit Agency).

³⁸⁹ See *id.*

³⁹⁰ See, e.g., MINORITY STAFF OF H. COMM. ON GOV'T REFORM & S. DEMOCRATIC POL'Y COMM., 109TH CONG., JOINT REPORT ON HALLIBURTON'S QUESTIONED AND UNSUPPORTED COSTS IN IRAQ EXCEED \$1.4 BILLION (Comm. Print 2005).

³⁹¹ See, e.g., MINORITY STAFF OF H. COMM. ON GOV'T REFORM, 107TH CONG., REPORT ON CLASS SIZES IN DAKOTA, WASHINGTON, AND ANOKA COUNTIES (Comm. Print 2002) (surveying elementary school class sizes).

³⁹² See, e.g., Leonard N. Fleming & Jacob Carah, *Congressional Dems Visit Flint: We Know We Have to Act*, DETROIT NEWS (Mar. 4, 2016), <https://www.detroitnews.com/story/news/michigan/flint-water-crisis/2016/03/04/congress-dems-flint-visit/81338788/> [<https://perma.cc/4627-68H2>].

³⁹³ Press Release, Rep. Elijah E. Cummings, Ranking Member, H. Comm. on Oversight & Gov't Reform, Cummings Calls on Michigan Governor Rick Snyder to Resign (May 17, 2016), <https://oversightdemocrats.house.gov/news/press-releases/cummings-calls-on-michigan-governor-rick-snyder-to-resign> [<https://perma.cc/D6PQ-K2F5>].

2. Whistleblowers

Whistleblowers are important sources from whom minority members can obtain information that they otherwise may not be able to compel through subpoenas. I use the term whistleblowers in its broadest sense to refer to anyone willing to provide information about potential waste, fraud, or abuse. Congress has enacted limited legal protections for certain whistleblowers,³⁹⁴ but the universe of people who provide information is much broader than those who qualify for protection under statute.³⁹⁵ They may include civil servants and political appointees, contractors and grantees, agency auditors and departmental investigators, criminal prosecutors and civil enforcement attorneys, corporate executives and nonprofit employees, and members of the press.

Whistleblowers' cooperation may change over time depending on risks they face and their level of confidence in members with whom they are working.³⁹⁶ Although some may be prepared to testify openly, others may prefer to remain anonymous, not agreeing to allow any information they provide to be used publicly, but providing it as background to generate leads.³⁹⁷ Some might still work in their offices and may continue providing information in real time.³⁹⁸ They can give firsthand eyewitness accounts, produce internal documents, emails, and other records, and provide critical background on the identities of other players and the internal structures of entities under investigation.³⁹⁹ Some who start out anonymously later may decide to come out publicly, or they may agree to let members use anonymized versions of their accounts or documents stripped of identifying information.⁴⁰⁰ They can also expose illegal retaliation and other unlawful conduct.⁴⁰¹

³⁹⁴ See, e.g., ANDREA M. MUTO, CONG. RSCH. SERV., R46979, COMPILATION OF FEDERAL WHISTLEBLOWER PROTECTION STATUTES (2026).

³⁹⁵ See *Frequently Asked Questions*, HOUSE OFF. OF THE WHISTLEBLOWER OMBUDS, <https://whistleblower.house.gov/resources/all-resources/frequently-asked-questions> [<https://perma.cc/6KFJ-7S5V>] (last visited Feb. 24, 2026).

³⁹⁶ See 171 Cong. Rec. S4247 (daily ed. July 8, 2025) (statement of Sen. Chuck Grassley); MERIT SYS. PROT. BD., BLOWING THE WHISTLE: BARRIERS TO FEDERAL EMPLOYEES MAKING DISCLOSURES 22–23 (2011).

³⁹⁷ See NICK SCHWELLENBACH, PROJECT ON GOV'T OVERSIGHT, CAUGHT BETWEEN CONSCIENCE AND CAREER (2019), <https://www.pogo.org/analyses/caught-between-conscience-and-career> [<https://perma.cc/M65R-7D6W>].

³⁹⁸ See *id.*

³⁹⁹ See *id.* at 20; see, e.g., *A Time for Truth: Oversight of Meta's Foreign Relations and Representations to the United States Congress: Hearing Before the Subcomm. on Crime & Counterterrorism of the S. Comm. on the Judiciary*, 119th Cong. (2025).

⁴⁰⁰ SCHWELLENBACH, *supra* note 397 at 25–32, 37; see, e.g., *Examining Boeing's Broken Safety Culture: Firsthand Accounts: Hearing Before S. Perm. Subcomm. on Investigations*, 118th Cong. (2024) (testimony of Boeing engineer Sam Salehpour describing whistleblowing efforts internally before testifying before Congress).

⁴⁰¹ Many congressional offices also have whistleblower tiplines. See, e.g., *Report Potential Wrongdoing*, HOUSE COMM. ON OVERSIGHT & GOV'T REFORM, <https://oversightdemocrats.house.gov/contact/tip-line> [<https://perma.cc/S5SB-G62D>] (last visited Feb. 24, 2026).

Minority members were able to utilize information from multiple whistleblowers who came forward during the Trump administration. To highlight a few: Ranking Member Sheldon Whitehouse (D-R.I.) and others on the Senate Committee on Environment and Public Works released a letter to the EPA with whistleblower documents showing more than 400 grants targeted for elimination;⁴⁰² House Oversight Committee Ranking Member Gerald Connolly (D-Va.) demanded an inspector general investigation after a whistleblower reported that DOGE was collecting sensitive data about Social Security beneficiaries;⁴⁰³ and Senate Judiciary Committee Ranking Member Dick Durbin (D-Ill.) mobilized opposition to Emil Bove's judicial nomination after a whistleblower disclosed his efforts to mislead judges and defy court orders.⁴⁰⁴ The biggest challenge for whistleblowers, apart from qualifying for protection under federal law, is that the Trump administration has been engaged in a "war on whistleblowers," as Nancy Modesitt described it in 2021.⁴⁰⁵ This campaign involved public firings, criminal investigations, retaliation through the press, and a reduction in resources for whistleblower protection.⁴⁰⁶

3. *Public Sources*

Minority members can take advantage of a vast amount of publicly available information to serve their investigative aims. This information can include public court filings with evidence submitted as exhibits and deposition transcripts,⁴⁰⁷ required disclosures for public officials,⁴⁰⁸ public databases of

⁴⁰² See Letter from Sen. Sheldon Whitehouse, Ranking Member, S. Comm. on Env't & Pub. Works, et al., to Lee M. Zeldin, Adm'r, Env't Prot. Agency (Mar. 25, 2025); Michael Phillis, Alexa St. John & Matthew Daly, *Democrats Say EPA Illegally Canceled Hundreds of Grants Aimed at Boosting 'Environmental Justice'*, ASSOCIATED PRESS (Mar. 25, 2025), <https://apnews.com/article/epa-zeldin-environmental-justice-grants-diversity-equity-ddbcedb1c7d1c3c3f310a-baf4044446c> [<https://perma.cc/XX8C-YJ3U>].

⁴⁰³ See Letter from Rep. Gerald E. Connolly, Ranking Member, H. Comm. on Oversight & Gov't Reform, to Michelle L. Anderson, Assistant Inspector Gen. for Audit Performing the Duties of the Inspector Gen., Soc. Sec. Admin. 1 (Apr. 17, 2025).

⁴⁰⁴ See Press Release, Durbin Statement on Whistleblower Disclosures by Erez Reuveni on Emil Bove's Nomination to Be a Circuit Court Judge (June 24, 2025), <https://www.durbin.senate.gov/newsroom/press-releases/durbin-statement-on-whistleblower-disclosures-by-erez-reuveni-on-emil-boves-nomination-to-be-a-circuit-court-judge> [<https://perma.cc/ZK2X-PB76>]; Piper Hudspeth Blackburn & Jamie Gangel, *More Than 75 Former Judges Urge Senate Committee to Reject Trump Judicial Nominee Emil Bove*, CNN (July 15, 2025, at 12:58 ET), <https://www.cnn.com/2025/07/15/politics/emil-bove-former-judges-reject-trump-judicial-nominee> [<https://perma.cc/T887-WEAK>].

⁴⁰⁵ Nancy M. Modesitt, *The War on Whistleblowers*, 6 U. PA. J. L. & PUB. AFF. 603, 613 (2021).

⁴⁰⁶ See *id.* at 613–27.

⁴⁰⁷ See, e.g., Tierney Sneed & Kara Scannell, *Video of Trump Taking the Fifth in Deposition with New York Attorney General Is Released*, CNN (Jan. 31, 2023, at 20:15 ET), <https://www.cnn.com/2023/01/31/politics/trump-deposition-video-letitia-james> [<https://perma.cc/MLL2-PKYD>].

⁴⁰⁸ See, e.g., Letter from Rep. Elijah E. Cummings, Ranking Member, H. Comm. on Oversight & Gov't Reform, to Donald F. McGahn II, Couns. to the President, and George A. Sorial,

detailed government information on numerous topics,⁴⁰⁹ and media reports.⁴¹⁰ It can also include a huge number of reports previously issued by GAO, CRS, inspectors general, and agency auditors.⁴¹¹ In the Iraq investigation discussed above, Ranking Member Waxman scoured foreign press accounts about regional oil interests and came upon a report suggesting that a Halliburton subcontractor had ties to Kuwaiti officials.⁴¹² Representative Waxman had his staff research corporate records and contact company officials before including this information in a letter to National Security Advisor Condoleezza Rice.⁴¹³

Members can also access a trove of information from required disclosures from corporate entities. Senator Elizabeth Warren (D-Mass.) has made this a specialty, mining earnings call transcripts, regulatory filings, executive compensation and bonus plan information, and other public corporate documents to bring attention to perceived abuses and call for action.⁴¹⁴ Similarly, the minority staff on the Senate Permanent Subcommittee on Investigations accessed a wide range of corporate and other data to quantify the preexisting legal and financial exposure that Elon Musk and his network of companies faced before he entered government and began exerting his influence over federal agencies.⁴¹⁵

Executive Vice President, Trump Org. 1 (Sep. 12, 2018) (requesting additional documents after President Trump failed to disclose hush money payments in public financial disclosure).

⁴⁰⁹ See, e.g., DEMOCRATIC STAFF OF H. COMM. ON OVERSIGHT & REFORM, 115TH CONG., TRUMP ADMINISTRATION ACTIONS THREATEN PEOPLE WITH PRE-EXISTING CONDITIONS (2018) (utilizing data from American Community Survey compiled by Census Bureau).

⁴¹⁰ See, e.g., Letter from Rep. Henry A. Waxman, Ranking Member, H. Comm. on Gov't Reform, to Rep. Tom Davis, Chairman, H. Comm. on Gov't Reform 1 (Sep. 29, 2003) (citing Robert D. Novak, *The Mission to Niger*, CHI. SUN-TIMES (July 14, 2003)) (requesting hearing on outing of CIA operative Valerie Plame); Joseph C. Wilson IV, *What I Didn't Find in Africa*, N.Y. TIMES (July 6, 2003), <https://www.nytimes.com/2003/07/06/opinion/what-i-didn-t-find-in-africa.html> [<https://perma.cc/8326-NCE8>].

⁴¹¹ See, e.g., U.S. GOV'T ACCOUNTABILITY OFF., GAO-25-107743, HIGH-RISK SERIES (2025).

⁴¹² Letter from Rep. Henry A. Waxman, Ranking Member, H. Comm. on Gov't Reform, to Condoleezza Rice, Nat'l Sec. Adviser 9 (Jan. 15, 2004) (citing *\$759,000 Daily Profit for Go-Between Company?*, AL TALEAA (Jan. 10, 2004)).

⁴¹³ See *id.* at 4 (citing *Company Status Report: Altanmia Commercial Marketing Co.*, INT'L CO. PROFILE (Dec. 2003), www.icpcredit.com [<https://perma.cc/FHC9-7RRV>]); see also *Al Tanmia Commercial Marketing Company*, KUWAIT CHAMBER OF COM., www.kcci.org.kw/html/english/dir~compnay~detail.asp [<https://perma.cc/DL7Q-T28C>].

⁴¹⁴ See, e.g., STAFF OF OFF. OF SEN. ELIZABETH WARREN, 118TH CONG., CANCEL CRUISES, AND CASH: HOW THE DEPARTMENT OF LABOR'S NEW RETIREMENT SECURITY RULE WOULD END INSURANCE INDUSTRY KICKBACKS THAT COST SAVERS BILLIONS (2024), https://www.warren.senate.gov/imo/media/doc/senator_warrens_annuity_report_-_sept_2024.pdf [<https://perma.cc/PBQ7-EGW5>]; see also Letter from Sen. Elizabeth Warren to Thomas Perez, Sec'y, Dep't of Lab., and Shaun Donovan, Dir. Off. of Mgmt. & Budget (Feb. 11, 2015) (contrasting dire corporate predictions to proposed Conflict of Interest rule in regulatory filings to assurances to investors that the rule would have no significant impact).

⁴¹⁵ Memorandum from Minority Staff of S. Perm. Subcomm. on Investigations, Calculating Risk: Estimating the Legal Liability Elon Musk May Avoid Through His Government Takeover (Apr. 27, 2025), <https://www.hsgac.senate.gov/wp-content/uploads/2025-04-27-Minority-Staff-Memorandum-Elon-Musk-Conflicts.pdf> [<https://perma.cc/MR28-233J>].

B. Disseminating Information

1. Minority Fora and Other Events

House and Senate rules do not prevent minority members from holding their own events to gather information and inform the public.⁴¹⁶ Although committee hearings are the official fora for congressional information gathering, another option for the minority is to hold events that have the trappings of hearings without their official imprimatur.⁴¹⁷ Minority panels can showcase information from people who want to tell their stories but have been ignored by the majority, educate constituents about changes to programs that affect them directly, and rally support for the minority's policy objectives. These events have been held as "roundtable discussions,"⁴¹⁸ member "task forces,"⁴¹⁹ "field hearings,"⁴²⁰ and even a "science fair" in one instance.⁴²¹ Of course, members can always use traditional press conferences to release new investigative information.⁴²²

⁴¹⁶ See, e.g., Amy Goldstein & Juliet Eilperin, *Even with No GOP Senate Bill in Sight, Democrats and Allies Begin Mobilizing to Fight It*, WASH. POST (June 21, 2017), https://www.washingtonpost.com/national/health-science/even-with-no-gop-senate-bill-in-sight-democrats-and-allies-begin-mobilizing-to-fight-it/2017/06/21/5b9af0c2-5694-11e7-ba90-f5875b7d1876_story.html [<https://perma.cc/8Y9P-65P9>] (describing minority hearing on Republican healthcare bill's effects on rural communities).

⁴¹⁷ In some cases, minority party organizations hold events called "hearings" without the majority. See *DPCC Hearings*, SENATE DEMOCRATS, <https://www.democrats.senate.gov/about-senate-dems/dpcc/hearings> [<https://perma.cc/VA9V-N7F3>] (last visited Feb. 8, 2026).

⁴¹⁸ See, e.g., Press Release, Sen. Jeanne Shaheen (D-N.H.), Ranking Member, S. Comm. on Foreign Relations, Ranking Member Shaheen Hosts Roundtable on National Security Implications of Halting U.S. Foreign Assistance (Feb. 12, 2025), <https://www.foreign.senate.gov/press/dem/release/ranking-member-shaheen-hosts-roundtable-on-national-security-implications-of-halting-us-foreign-assistance> [<https://perma.cc/76Y7-J2CH>]; Press Release, Democratic Leader Hakeem Jeffries, Congresswoman Dean, House Democratic Steering & Policy Committee to Hold Roundtable on Donald Trump's Cost of Living Crisis (June 9, 2025).

⁴¹⁹ See, e.g., Press Release, Thompson, Clyburn Joined by Leader Jeffries to Reintroduce Legislation Expanding Background Checks for Gun Sales (June 11, 2025), <https://mikethompson.house.gov/newsroom/press-releases/thompson-clyburn-joined-leader-jeffries-reintroduce-legislation-expanding> [<https://perma.cc/L74V-PHAX>].

⁴²⁰ See, e.g., Jonathan Miller, *Senate Panel Plans Field Hearing on 'Clean Energy Economy'*, POLITICO: E&E NEWS (May 5, 2025, at 06:51 ET), <https://www.eenews.net/articles/senate-panel-plans-field-hearing-on-clean-energy-economy/> [<https://perma.cc/6SX5-SJ8U>] (describing a planned "field hearing" regarding clean energy and small business); Shane Fordham, *Lawmakers Raise Concerns over VA Job Cuts, Effect on Veterans at NSU Hearing*, 13NEWSNOW (June 4, 2025, at 11:18 ET), <https://www.13newsnow.com/article/news/politics/national-politics/house-democratic-committee-holds-hearing-on-republican-attacks-on-veterans-at-nsu/291-2f030362-a356-4029-b10e-2eb405fbd9c7> [<https://perma.cc/B59S-Y9AW>] (describing a hearing held in the field at Norfolk State University regarding VA layoffs).

⁴²¹ See Jeffrey Mervis & Nazeefa Ahmed, *Democrats Stage a Science Fair of Canceled Grants to Show What's Been Lost*, SCI. (July 8, 2025, at 17:40 ET), <https://www.science.org/content/article/democrats-stage-science-fair-canceled-grants-show-what-s-been-lost> [<https://perma.cc/JRB9-DBDE>].

⁴²² See, e.g., *Representatives Jason Chaffetz and Elijah Cummings News Conference*, C-SPAN (Apr. 25, 2017), <https://www.c-span.org/program/campaign-2018/representatives-jason-chaffetz-and-elijah-cummings-news-confernece/476868> [<https://perma.cc/Z4N3-HR9R>].

These fora can be used to highlight the minority's priorities, as House Democrats did during the government shutdown in 2025 and on the five-year anniversary of the January 6 attacks in 2026.⁴²³ Minority members can also hold bicameral events, although they take more coordination. Representative Jamie Raskin and Senator Adam Schiff (D-Cal.) organized members of both chambers to hear from former Justice Department officials protesting the alleged weaponization of the agency under the Trump administration.⁴²⁴ Given the number of federal employees the administration has terminated, minority members could hold fora on a wide range of additional issues, including the firing of inspectors general in violation of federal law⁴²⁵ or the termination of some of the military's top leaders and service attorneys.⁴²⁶

Finally, the minority does not have to remain silent if the majority refuses to invite minority witnesses to official hearings. For example, in 2012, Oversight Committee Chairman Issa announced a hearing with an all-male panel of religious leaders to testify about contraception. When Chairman Issa refused Ranking Member Cummings's request to invite Georgetown Law student Sandra Fluke to testify on behalf of women affected by these policies, Representative Cummings invited Fluke to sit in the audience, released a video of her statement, and then invited her to appear at a minority forum covered by C-SPAN.⁴²⁷ These actions were not based on minority rights specifically referenced in House rules, yet they were effective: Fluke's story—and the

(announcing receipt of documents and classified briefing regarding Lt. General Michael Flynn's failure to report foreign payments).

⁴²³ See Press Release, Democratic Leadership, Steering & Policy Committee Hold Hearing on the Republican Healthcare Crisis (Oct. 8, 2025); *House Democrats Hold Meeting on Fifth Anniversary of January 6 Attack*, C-SPAN (Jan. 6, 2026), <https://www.c-span.org/program/public-affairs-event/house-democrats-hold-meeting-on-fifth-anniversary-of-january-6-attack/671191> [<https://perma.cc/PUU5-ML6P>].

⁴²⁴ Press Release, Senator Schiff, Ranking Member Raskin Lead Senate and House Democrats in Bicameral Spotlight Hearing on the Rule of Law (Apr. 8, 2025), <https://www.schiff.senate.gov/news/press-releases/watch-sen-schiff-ranking-member-raskin-lead-senate-and-house-democrats-in-bicameral-spotlight-hearing-on-the-rule-of-law/> [<https://perma.cc/GY7B-VTFT>].

⁴²⁵ See Laura Barrón-López & Shrai Papat, *Inspectors General Fired by Trump Issue Warning About Lack of Oversight*, PBS NEWS (Feb. 19, 2025, at 18:40 ET), <https://www.pbs.org/newshour/show/inspectors-general-fired-by-trump-issue-warning-about-lack-of-oversight> [<https://perma.cc/6LRT-YY99>].

⁴²⁶ See Oren Liebermann & Haley Britzky, *Trump Administration Fires Top US General and Navy Chief in Unprecedented Purge of Military Leadership*, CNN (Feb. 21, 2025, at 21:41 ET), <https://www.cnn.com/2025/02/21/politics/trump-fires-top-us-general-cq-brown> [<https://perma.cc/G3XV-U3Y3>]; Frank Kendall, *America Has a Rogue President*, N.Y. TIMES (Feb. 24, 2025), <https://www.nytimes.com/2025/02/24/opinion/trump-hegseth-cq-brown-pentagon-firings-jag.html> [<https://perma.cc/NF83-AK2H>]; Letter from Chuck Hagel, James N. Mattis, Leon E. Panetta, Lloyd J. Austin III & William J. Perry to Cong. (Feb. 27, 2025) (five Republican and Democratic former U.S. Defense Secretaries calling for public hearings).

⁴²⁷ See OVERSIGHT COMM. DEMOCRATS, *Fluke Responds to Nationwide Campaign Against Contraceptives* (YouTube, Feb. 23, 2012), <https://www.youtube.com/watch?v=RjhfUuW8Vgo> [<https://perma.cc/VF8T-EWWY>].

majority's refusal to hear it—captured the public's attention so effectively that she was invited to speak at the Democratic National Convention.⁴²⁸

2. *Minority Reports and Websites*

In addition to holding public events, minority members can disseminate their own reports to reveal evidence they uncover, offer conclusions, and call for additional investigative or legislative steps. These reports can be issued by members' personal offices or minority committee staff.⁴²⁹ Their format can vary widely, from lengthy reports that take years to compile,⁴³⁰ to shorter “flash reports” that respond rapidly to pending issues,⁴³¹ to one-page fact-sheets that give members information at a glance.⁴³² For many years while he was in the minority, Senator Tom Coburn (R-Okla.) issued annual “wastebook” reports to identify improvident federal spending.⁴³³ Although minority reports are not required to be voted on, they may be included in official committee reports as “minority views” and in official hearing transcripts when submitted for the record.⁴³⁴ Minority reports also can be disseminated through press releases, minority events, or custom websites designed to give the public and press easy access to the information.⁴³⁵

⁴²⁸ See DEMOCRATIC NAT'L CONVENTION, *Sandra Fluke at the 2012 Democratic National Convention* (YouTube, Sep. 6, 2012), https://www.youtube.com/watch?v=I3KOD_nAeog [<https://perma.cc/9FNV-WL3U>].

⁴²⁹ See, e.g., MINORITY STAFF OF S. COMM. ON HOMELAND SEC. & GOV'TL AFFS., 119TH CONG., REPORT ON UNDERMINING THE WATCHDOGS: THE 19 INDEPENDENT INSPECTORS GENERAL FIRED BY PRESIDENT TRUMP UNCOVERED BILLIONS IN WASTE, FRAUD, AND ABUSE (Comm. Print 2025); STAFF OF SEN. ELIZABETH WARREN, 119TH CONG., REPORT ON SPECIAL INTERESTS OVER THE PUBLIC INTEREST: ELON MUSK'S 130 DAYS IN THE TRUMP ADMINISTRATION (2025), https://www.warren.senate.gov/imo/media/doc/130_days_of_elon_musk_report.pdf [<https://perma.cc/XW6R-CZ4J>].

⁴³⁰ See, e.g., MINORITY STAFF OF H. COMM. ON FOREIGN AFF., 117TH CONG., REPORT ON THE ORIGINS OF COVID-19 (Comm. Print 2021) (describing results of 504-day investigation).

⁴³¹ See, e.g., MINORITY STAFF OF H. COMM. ON GOV'T REFORM, 109TH CONG., REPORT ON THE BUSH ADMINISTRATION'S DATA ON GLOBAL TERRORISM IN 2005 (Comm. Print 2006).

⁴³² See, e.g., MINORITY STAFF OF H. COMM. ON WAYS & MEANS, 117TH CONG., DEMOCRATS' “MOM & POP PAYCUT” IS A SMALL BUSINESS SURTAX ON AMERICA'S SMALL BUSINESS OWNERS (Comm. Print 2022).

⁴³³ See, e.g., *Wastebook 2014: Government's Questionable Spending*, CBS NEWS (Oct. 22, 2014, at 07:05 ET), <https://www.cbsnews.com/news/wastebook-2014-sen-coburn-highlights-questionable-wasteful-government-spending/> [<https://perma.cc/GJ4N-Z7Z5>].

⁴³⁴ See, e.g., MINORITY STAFF OF H. COMM. ON OVERSIGHT AND GOV'T REFORM, 112TH CONG., FATAALLY FLAWED: FIVE YEARS OF GUNWALKING IN ARIZONA (Comm. Print 2012), reprinted in H.R. REP. NO. 112-546, at 172–266 (2012), <https://www.congress.gov/112/crpt/hrpt546/CRPT-112hrpt546.pdf> [<http://perma.cc/8X4L-BWDJ>]; MINORITY STAFF OF H. COMM. ON GOV'T REFORM, 108TH CONG., REPORT ON THE POLITICIZATION OF INSPECTORS GENERAL (Comm. Print 2006), reprinted in *Nomination of Eric Thorson to be the Inspector General of the Small Business Administration: Hearing Before the S. Comm. on Small Bus. and Entrepreneurship*, 109th Cong. 138–62 (2006).

⁴³⁵ Although minority reports are sometimes difficult to find if not reprinted in official publications, the Levin Center for Oversight and Democracy has compiled a database of majority and minority oversight reports for practitioners, academics, press, and the public. *Congressional*

For example, when House Republicans established a select committee to investigate the 2012 Benghazi attacks after seven other committees had already concluded investigations, Majority Leader Kevin McCarthy (R-Cal.) stated that one of their goals was to bring down the poll numbers of then-presidential candidate Hillary Clinton.⁴³⁶ To expose the extent to which the majority was treading old ground, the minority issued a detailed report at the beginning of the investigation “to collect—in one place—as much information as possible regarding questions that have already been asked and answered about the attacks in Benghazi.”⁴³⁷ They also created a compendium of investigative resources, an “asked and answered” database responding to more than 150 questions about the attacks, and an interactive website that allowed users to see this evidence with a few clicks, all of which generated press that contributed to the public’s understanding of the issue.⁴³⁸ Although the majority later called Secretary Clinton to testify, they admitted that their investigation yielded little new information.⁴³⁹ Polling indicated that a majority of Americans, even as they questioned some of Secretary Clinton’s actions, believed the majority’s investigation was “a politically motivated attempt to damage the former secretary of state rather than an effort to raise legitimate concerns.”⁴⁴⁰

Oversight Records Database, LEVIN CTR. FOR OVERSIGHT & DEMOCRACY, <https://www.cord-levin-center.org/home> [<https://perma.cc/E82B-5STF>].

⁴³⁶ See HANNITY (FOX television broadcast, aired Sep. 29, 2015).

⁴³⁷ MINORITY STAFF OF H. SELECT COMM. ON THE EVENTS SURROUNDING THE 2012 TERRORIST ATTACK IN BENGHAZI, 113TH CONG., COMPENDIUM OF INVESTIGATIVE RESOURCES—BENGHAZI ON THE RECORD: ASKED AND ANSWERED 2 (Comm. Print 2014).

⁴³⁸ Minority Staff of H. Select Comm. on Benghazi, *Benghazi on the Record: Asked and Answered*, SELECT COMM. ON BENGHAZI (Sep. 16, 2014), <https://cybercemetery.unt.edu/askedandansweredbenghazi/20170908195948/http://askedandanswered-democrats.benghazi.house.gov/> [<https://perma.cc/W3RK-VTPT>]; Wesley Lowery, *In a Preemptive Push, House Democrats Unveil New Benghazi Site*, WASH. POST (Sep. 16, 2014), <https://www.washingtonpost.com/news/post-politics/wp/2014/09/16/in-a-preemptive-push-house-democrats-unveil-new-benghazi-site/> [<https://perma.cc/QB7X-LTY3>].

⁴³⁹ See Bristow Marchant, *Gowdy Says Congress Hearings an ‘Unmitigated Failure,’ Including His Clinton Panel*, STATE (Mar. 4, 2019, at 17:47 ET), <https://www.thestate.com/news/politics-government/article227087609.html> [<https://perma.cc/7GAJ-FLE8>]; David M. Herszenhorn, *House Benghazi Report Finds No New Evidence of Wrongdoing by Hillary Clinton*, N.Y. TIMES (June 28, 2016), <https://www.nytimes.com/2016/06/29/us/politics/hillary-clinton-benghazi.html> [<https://perma.cc/5V6S-GFFG>]. The minority also issued a report at the conclusion of the investigation. DEMOCRATIC MEMBERS OF THE H. SELECT COMM. ON THE EVENTS SURROUNDING THE 2012 TERRORIST ATTACK IN BENGHAZI, 114TH CONG., REPORT ON HONORING COURAGE, IMPROVING SECURITY, AND FIGHTING THE EXPLOITATION OF A TRAGEDY (Comm. Print 2016), reprinted in H.R. REP. NO. 114-848, at 645–989 (2016).

⁴⁴⁰ See Peyton M. Craighill & Anne Gearan, *Americans Skeptical of Both Clinton, Republicans on Benghazi*, WASH. POST (Oct. 22, 2015), https://www.washingtonpost.com/politics/americans-skeptical-of-both-clinton-republicans-on-benghazi/2015/10/21/76ed7bfe-7830-11e5-a958-d889faf561dc_story.html [<https://perma.cc/9NNZ-AUSS>]; see also Emily Stephenson, *Democrats Back Clinton, Say Benghazi Probe Mostly Politics*, REUTERS (Oct. 21, 2015, at 08:59 ET), <https://www.reuters.com/article/world/uk/democrats-back-clinton-say-benghazi-probe-mostly-politics-poll-idUSKCN0SF120/> [<https://perma.cc/KV3M-MGDM>].

3. *Amicus Briefs*

There are differing opinions about the extent to which amicus briefs impact judicial decision-making, but they can provide background on legislative history, reduce errors based on partial information, and explain ramifications for stakeholders who may not be parties to the case.⁴⁴¹ For minority members, filing amicus briefs can provide opportunities to counter policies they oppose and promote policies they support. Amicus briefs often explicitly highlight the direct experience of minority members in crafting legislation at issue, as 203 members did when they filed a brief opposing the Trump administration's effort to shutter the CFPB in 2025.⁴⁴² Courts often express deference to members' experience, as the district court did in the CFPB case.⁴⁴³

Amicus briefs also can give courts the particular perspective of the minority on investigative matters. For example, when Chairman Issa filed a civil suit to compel Attorney General Eric Holder to produce documents relating to Operation Fast and Furious, members of the minority filed an amicus brief arguing that they strongly supported the institutional interests of Congress, but they highlighted for the court additional investigative steps the majority should have taken before seeking judicial intervention.⁴⁴⁴ Amicus briefs also give the minority opportunities to show the public, supporters, and constituents that they are fighting for them rather than quietly accepting their minority status.⁴⁴⁵

One challenge with filing amicus briefs as the minority is securing counsel. House and Senate Legal Counsel represent their respective bodies in litigation, which includes bringing suits on behalf of committees and leadership and defending against cases filed against them.⁴⁴⁶ Unless authorized by

⁴⁴¹ Cf. Paul M. Collins, Jr., Pamela C. Corley & Jesse Hamner, *The Influence of Amicus Curiae Briefs on U.S. Supreme Court Opinion Content*, 49 *LAW & SOC'Y REV.* 917, 938–40 (2015) (analyzing how frequently Justices borrow language from amicus briefs), with JEFFREY A. SEGAL & HAROLD J. SPAETH, *THE SUPREME COURT AND THE ATTITUDINAL MODEL REVISITED* 6–12 (2002) (arguing that Justices decide cases based purely on policy preferences).

⁴⁴² Brief of 203 Members of Congress as Amici Curiae in Support of Plaintiff's Motion for a Preliminary Injunction at 1, *Nat'l Treasury Emps. Union v. Vought*, No. 1:25-cv-00381-ABJ (D.D.C. Feb. 28, 2025) (highlighting their role in passing legislation to create agency, including as sponsors, drafters, committee members, and leadership).

⁴⁴³ *Nat'l Treasury Emps. Union v. Vought*, 774 F. Supp. 3d 1, 82–83 (D.D.C. 2025) (discussing brief submitted by members), *vacated and remanded*, 149 F.4th 762, 795–96 (D.C. Cir. 2025) (also citing members' brief), *reh'g en banc granted, opinion vacated*, No. 25-5091, 2025 WL 3659406 (D.C. Cir. Dec. 17, 2025).

⁴⁴⁴ Brief of Amici Curiae Reps. Elijah E. Cummings, John Conyers, Jr., Henry A. Waxman, Edolphus Towns, and Louise M. Slaughter in Support of Dismissal at 1–2, *Comm. on Oversight & Gov't Reform v. Holder*, 979 F. Supp. 2d 1 (D.D.C. 2013) (No. 1:12-cv-01332).

⁴⁴⁵ See, e.g., House Democrats, *Litigation/Response Task Force*, <https://litigationandresponse.house.gov/> [<https://perma.cc/8ZW6-DBEA>] (minority task force that provides a clearinghouse with amicus filings and coordinates members joining amicus briefs to demonstrate they are “pushing back in Congress, in the courts and our communities”).

⁴⁴⁶ H.R. Rule II, cl. 8, 117th Cong. (2021); 2 U.S.C. § 288 (2019). In addition to filing amicus briefs, minority members can achieve similar goals by filing comments to agency rulemaking

the full House or Senate, they generally do not draft amicus briefs for members. Instead, members rely on assistance by outside experts, including law firms that offer pro bono services,⁴⁴⁷ nonprofit organizations,⁴⁴⁸ and groups that focus on specific areas of law.⁴⁴⁹ Another challenge arises when both majority and minority members file dueling briefs on opposite sides of an issue as they compete to be viewed as the authoritative voice of Congress.⁴⁵⁰

4. Protests

Finally, minority members can engage in acts of public protest inside or outside of Congress.⁴⁵¹ For example, in 2013, well before Senator Booker set his record for the longest Senate speech, Senator Ted Cruz (R-Tex.) held the floor for more than twenty-one hours to protest the ACA.⁴⁵² More recently, Democrats held the Senate floor overnight to protest President Trump's nominee for OMB Director, Russell Vought.⁴⁵³ And, as mentioned above, Democrats boycotted a Senate Judiciary Committee business meeting when Chairman Grassley refused to follow committee rules.⁴⁵⁴ Off the Hill, minority members have protested at federal agencies, including at the Department of

proposals. *See generally* MAEVE P. CAREY & TODD GARVEY, CONG. RSCH. SERV., IF12368, COMMUNICATIONS BETWEEN CONGRESS AND FEDERAL AGENCIES DURING THE RULEMAKING PROCESS (2023); Rachel Augustine Potter, *Member Comments: The Other (Less Visible) Way Congress Oversees Rulemaking*, BROOKINGS (Nov. 21, 2019), <https://www.brookings.edu/articles/member-comments-the-other-less-visible-way-congress-oversees-rulemaking/> [<https://perma.cc/E4X9-QG2W>].

⁴⁴⁷ *See, e.g.*, Brief of Amici Curiae Rep. Cummings et al., *supra* note 444 (prepared by Donahue & Goldberg, LLP).

⁴⁴⁸ *See, e.g.*, Brief of 203 Members of Congress, *supra* note 442, at 25–26 (prepared by Public Justice and Sher Tremonte LLP).

⁴⁴⁹ *See, e.g.*, Brief of Current and Former Members of Congress as Amici Curiae in Support of Appellees and Affirmance at 2, *Nat'l Treasury Emps. Union v. Vought*, Nos. 25-5091, 25-5132 (D.C. Cir. May 9, 2025) (prepared by Constitutional Accountability Center).

⁴⁵⁰ *See, e.g.*, Brief of Members of Congress as Amicus Curiae in Support of Applications for Stays at 1, *Trump v. CASA*, 145 S. Ct. 2540 (2025) (Nos. 24A884, 24A885, 24A886) (eighteen Republicans supporting executive order to end birthright citizenship); Brief of Members of the U.S. Congress as Amici Curiae in Support of Respondents at 1, *Trump v. CASA*, 145 S. Ct. 2540 (2025) (Nos. 24A884, 24A885, 24A886) (183 Democrats opposing executive order).

⁴⁵¹ *See generally* Brian Alexander, *Procedural Disobedience: Minority Resistance in the US House of Representatives*, 51 POL. SCI. & POL. 124 (2018) (describing sit-in staged by Democratic members of Congress in the House of Representatives after the Pulse nightclub shooting in protest of a lack of congressional action on federal gun control legislation).

⁴⁵² 159 CONG. REC. 14143–283 (2013); *Cruz Reads Green Eggs and Ham in Anti-Obamacare Speech*, BBC NEWS (Sep. 25, 2013), <https://www.bbc.com/news/av/world-us-canada-24272313> [<https://perma.cc/4FZ3-BE2T>].

⁴⁵³ 171 CONG. REC. S611–778 (daily ed. Feb. 5, 2025); Robert Jimison, *Senate Democrats Hold the Floor in Overnight Protest of Trump Nominee*, N.Y. TIMES (Feb. 6, 2025), <https://www.nytimes.com/2025/02/06/us/politics/trump-senate-democrats-russell-vought.html> [<https://perma.cc/2665-DYXZ>].

⁴⁵⁴ *See supra* Part III.A.2; *Business Meeting Before the S. Comm. on the Judiciary*, 119th Cong. (July 17, 2025), <https://www.judiciary.senate.gov/committee-activity/hearings/executive-business-meeting-07-17-2025> [<https://perma.cc/H93W-8YAJ>].

Education,⁴⁵⁵ EPA,⁴⁵⁶ USAID,⁴⁵⁷ and CFPB.⁴⁵⁸ Members have also engaged in civil disobedience. In 2016, for example, Representative John Lewis (D-Ga.) and other House Democrats participated in a sit-in on the floor to demand a vote on gun control legislation after the Orlando nightclub shooting.⁴⁵⁹ Similarly, multiple members were arrested at demonstrations after the Supreme Court overturned *Roe v. Wade*.⁴⁶⁰

V. PROPOSALS FOR THE MINORITY IN UNIFIED PARTY GOVERNMENT

The review above demonstrates that although minority members have more limited powers than the majority—they cannot call official hearings, mark-up legislation, or issue unilateral subpoenas—they have options. Instead of limiting themselves to a binary choice between complete obstruction and total passivity, the minority could engage more selectively and strategically in executing their investigative powers. In addition, the minority could consider bolder changes to their approach, including moving beyond the organizational structures of Congress and beyond the majority-controlled proceedings in Washington, D.C. Based on this review, I offer several proposals for minorities to help achieve their objectives while enhancing Congress's overall effectiveness as a check on the Executive Branch.

A. *Beyond All-or-Nothing*

It has become axiomatic, at least in modern times, that Congress is more likely to vigorously investigate the actions of the Executive Branch when it

⁴⁵⁵ See Video posted by Maxwell Alejandro Frost (@maxwellfrostfl), INSTAGRAM (Feb. 7, 2025), <https://www.instagram.com/reels/DFxtnoCuvia/> [<https://perma.cc/FP6F-LNL8>].

⁴⁵⁶ See Filip Timotija, *Democrats Denied Access to EPA During Attempt to Meet with DOGE Officials*, THE HILL (Feb. 6, 2025, at 22:55 ET), <https://thehill.com/policy/energy-environment/5132042-democrats-denied-access-to-epa-during-attempt-to-meet-with-doge-officials/> [<https://perma.cc/2LLY-HWVB>].

⁴⁵⁷ See Scott Wong, Sahil Kapur & Julia Jester, *Out of Power, Democratic Lawmakers Take to the Streets to Rally Opposition to Trump*, NBC NEWS (Feb. 5, 2025, at 19:20 ET), <https://www.nbcnews.com/politics/congress/power-democratic-lawmakers-take-streets-rally-opposition-trump-rcna190842> [<https://perma.cc/5UCS-4YUS>].

⁴⁵⁸ See *Congressional Democrats Protest Trump Administration Closing CFPB*, C-SPAN (Feb. 10, 2025), <https://www.c-span.org/program/news-conference/congressional-democrats-protest-trump-administration-closing-cfpb/655590> [<https://perma.cc/37FW-CF7K>].

⁴⁵⁹ *Representative John Lewis Leads House Democratic Sit-In on Gun Legislation*, C-SPAN (June 21, 2016), <https://www.c-span.org/program/us-house-of-representatives/representative-john-lewis-leads-house-democratic-sit-in-on-gun-legislation/549816> [<https://perma.cc/Z5S8-Z3YD1>].

⁴⁶⁰ Kathryn Watson & Ellis Kim, *17 Members of Congress Arrested During Supreme Court Protest, Capitol Police Say*, CBS NEWS (July 19, 2022, at 16:03 ET), <https://www.cbsnews.com/news/representatives-congress-arrested-today-supreme-court-abortion-alexandria-ocasio-cortez-carolyn-maloney-2022-07-19/> [<https://perma.cc/2TMS-6PVX>].

is led by a president of the opposing political party.⁴⁶¹ When members of the other party control one or both houses of Congress, they may try to increase their leverage on policy matters by demonstrating waste, fraud, or abuse at executive agencies, and they may seek to diminish the political standing of the executive while increasing their own party's electoral prospects in the process.⁴⁶² With unified party government, however, incentives for conducting oversight of the Executive Branch are much weaker, and the majority may see less reward in exposing malfeasance that undermines support for its agenda.⁴⁶³ Instead, majority members may want to take full advantage of their position by passing their most aggressive policy measures with the slimmest margins, and they may try to minimize minority participation, input, and power in the process.⁴⁶⁴ Majority members may be more willing to acquiesce in questionable executive actions, and they may have incentives to ignore, sideline, and reduce the ability of the minority to investigate or influence the outcome of debates.

These are the circumstances Democrats found themselves in when they faced unified Republican control during the first hundred days of President Trump's second term. In response, the two competing approaches Democrats were debating served seemingly distinct goals: (1) maximum obstruction to halt or mitigate damage they believed the majority party's policies and actions would inflict; and (2) maximum passivity to preserve and increase the minority's electoral prospects in future elections. These goals may seem simplistic, but they illustrate the urgent nature of the minority's predicament.⁴⁶⁵

⁴⁶¹ See DOUGLAS L. KRINER & ERIC SCHICKLER, *INVESTIGATING THE PRESIDENT: CONGRESSIONAL CHECKS ON PRESIDENTIAL POWER* 44–55 (2016); David C.W. Parker & Matthew Dull, *Divided We Quarrel: The Politics of Congressional Investigations, 1947–2004*, 34 *LEGIS. STUD. Q.* 319, 319 (2009); cf. DAVID R. MAYHEW, *DIVIDED WE GOVERN: PARTY CONTROL, LAWMAKING, AND INVESTIGATIONS, 1946–1990* 8–33 (2005) (finding little relation prior to 1990 between high-publicity congressional investigations and divided or unified party control).

⁴⁶² See Douglas Kriner, *Can Enhanced Oversight Repair the Broken Branch*, 89 *B.U. L. REV.* 765, 791 (2009).

⁴⁶³ See Claire Leavitt, *Good Governance and the Partisan Wars: The Effects of Divided Government on Administrative Problem Solving and Oversight Agenda Setting in Congress*, 139 *POL. SCI. Q.* 201, 217–21 (2024); see also MOLLY E. REYNOLDS & NAOMI MAEHR, BROOKINGS INST., *HOW PARTISAN AND POLICY DYNAMICS SHAPE CONGRESSIONAL OVERSIGHT IN THE POST-TRUMP ERA* 18 (July 2023), https://www.brookings.edu/wp-content/uploads/2023/07/07282023_oversightreport.pdf [<https://perma.cc/5S8P-HCZU>].

⁴⁶⁴ See GARY W. COX & MATHEW D. MCCUBBINS, *SETTING THE AGENDA: RESPONSIBLE PARTY GOVERNMENT IN THE U.S. HOUSE OF REPRESENTATIVES* 9–11 (2005).

⁴⁶⁵ Many minority members no doubt would add the normative goal of passing bipartisan legislation that transcends partisan rancor, but the minority's outsider status and the majority's penchant for going it alone have made this goal increasingly difficult. See, e.g., Paul Kane, *A New Low in Bipartisanship: Trump Hasn't Met with Schumer or Jeffries*, *WASH. POST* (Aug. 6, 2025), <https://www.washingtonpost.com/politics/2025/08/06/schumer-jeffries-no-trump-meeting-government-shutdown> [<https://perma.cc/T6QT-W4YR>]; see Sahil Kapur, *Senate Republicans Knife Bipartisan Border Security Bill, Declaring It Dead*, *NBC NEWS* (Feb. 6, 2024), <https://www.nbcnews.com/politics/congress/senate-republicans-knife-bipartisan-border-security-bill-declaring-dea-rcna137572> [<https://perma.cc/8XGR-A7B8>]. Compare Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong. (Aug. 10, 2021) (passing the Senate with a bipartisan

Framed this way, however, each proposal appears to favor one goal at the expense of the other. The “shut it down” camp may succeed in temporarily delaying damage the majority’s agenda could cause, but this approach could backfire politically, causing public opinion to turn on the minority and allowing the majority to retain control. On the other hand, the “roll over and play dead” camp could allow majority policies to be implemented more easily, inflicting greater perceived harms to people, programs, and interests valued by the minority, while banking almost completely on the electorate rejecting the majority’s agenda come election day.⁴⁶⁶ Apart from these political considerations, both strategies also could have negative implications for Congress’s Article I responsibilities and the separation of powers. Shutting down Congress so it cannot function risks sidelining the Legislative Branch and giving the Executive Branch free rein to take actions with little oversight or push-back. On the other hand, rolling over obviously means abandoning Congress’s role as an equal branch and allowing the majority to make Congress subservient to the President.

In contrast, the review above indicates that the minority could pursue both goals at the same time and that mitigating harm and enhancing electoral promise do not have to be either-or objectives. The minority could use more of the tools discussed above in strategic ways, in combination or in succession, and with approaches that some majority members may support. They could also bring greater public attention to their efforts by coordinating across multiple committees. In these ways, the minority also could help Congress better serve its institutional separation of powers responsibilities under the Constitution.

To illustrate how this could work, the minority could, for example, launch a coordinated investigation of corruption in the Executive Branch and the President’s inner circle. Political scientists have warned about a startling increase in self-dealing within the Trump administration and have proposed making anti-corruption a key focus for Democrats.⁴⁶⁷ Minority members on multiple committees could put meat on the bones of this effort by gathering evidence about specific instances of abuse in programs in their jurisdictions and utilizing all the tools discussed above to collect information, including

vote of sixty-nine to thirty) *with* One Big Beautiful Bill Act, H.R. 1, 119th Cong. (July 1, 2025) (passing the Senate on a party line budget reconciliation vote of fifty-one to fifty). Nevertheless, proposals for pursuing bipartisan opportunities are included in Part V.D below.

⁴⁶⁶ Of course, counter-arguments could be made, for example, that greater obstruction might energize a party’s base while rolling over might discourage participation by minority party voters.

⁴⁶⁷ See, e.g., Peter Stone, *‘I Have Never Seen Such Open Corruption’: Trump’s Crypto Deals and Loosening of Rules Shock Observers*, GUARDIAN (June 17, 2025, at 07:00 ET), <https://www.theguardian.com/us-news/2025/jun/17/trump-crypto-memecoin-corruption> [<https://perma.cc/VXE2-E54C>] (quoting political scientist Steven Levitsky); see Adam Bonica, *The Democrats’ Path Forward: Become the Anti-Corruption Party*, ON DATA AND DEMOCRACY (Sep. 21, 2025), <https://data4democracy.substack.com/p/the-democrats-path-forward-become> [<https://perma.cc/R28N-YK7M>].

from public and non-public sources, leaked information, and firsthand interviews. This information could form the basis for public letters requesting documents and testimony from agency officials and private sector actors, as well as minority requests for the majority to seek documents or invite witnesses on behalf of the committees. Public attention to the minority's work could lead to whistleblowers providing additional non-public information to the minority, which in turn could support further requests to agencies, private entities, and the majority.

If the majority refuses to consider these requests, the minority could convert them into specific, reasonable, and concrete demands and begin utilizing various tools to increase their leverage with the majority. The minority could move for subpoenas, as several minority members have done, but they could also take steps to press their position incrementally. They could invoke their right to hold minority days of hearings much more frequently than they currently do. They could stop assenting to routine UC motions at hearings or markups and, ramping up further, could begin moving to postpone or even adjourn proceedings. If minority members of one committee reach an impasse with their majority over demands for records or testimony, minorities on other committees could agree to hold a "business-not-as-usual" day and move to adjourn all of their hearings in solidarity. They could introduce freestanding legislation or amendments to bills under committee consideration to require the production of information, and they could introduce discharge petitions to try to force votes on the floor. Minority members could reinforce their position by issuing their own reports and laying out for the press and public new evidence and findings about abuses under investigation. The minority could hold minority fora with experts, workers, victims, and other affected stakeholders, and they could request that GAO conduct investigations and participate in events that highlight their investigative work. Although minority members have taken many of these individual steps and others in isolation,⁴⁶⁸ they could work across committees to enhance coordination, leverage, and effectiveness. To avoid the potential political downsides of appearing obstructive or dilatory, the minority could calibrate their actions at every stage and make clear that they would suspend these practices if progress were made on their demands.

Determining the most effective strategy for a particular investigation is a complex and nuanced undertaking that depends on multiple factors. To strike the right balance, the minority must be discerning in choosing which issues it presses and why. The illustration proposed above—corruption in the Executive Branch—may resonate across a broad spectrum of the public, promote engagement across committees, and be particularly compelling during periods of unified party government when the majority in Congress seems

⁴⁶⁸ See, e.g., Rep. Robert Garcia, Ranking Member, H. Comm. on Oversight & Gov. Reform, *Trump Family Digital Grift Wealth Tracker* (accessed Jan. 20, 2026), <https://oversightdemocrats.house.gov/trump-family-corruption-tracker?1> [<https://perma.cc/3W8W-9LFL>] (website with running tallies of profits the Trump family is obtaining through "digital grift schemes").

uninterested in holding the Executive Branch to account.⁴⁶⁹ But the minority could focus on other issues that resonate with the public and lend themselves to more readily accessible information. For example, minority members could use their investigative tools to examine the increasing costs of living for their constituents.⁴⁷⁰ They could conduct their own surveys of a wide range of household goods, examine local effects of tariffs on select industries, or focus on specific sectors such as healthcare, education, or housing. There are indications that minority staff on several committees are beginning to do more of this type of work.⁴⁷¹ In addition to expanding these efforts more broadly across additional committees and offices, the minority could combine forces to produce reports that highlight common themes, make parallel findings, and draw wider conclusions. These minority reports could be issued through joint press strategies with simple, compelling, and uniform branding and a staggered schedule to generate maximum impact. Regardless of the topics they choose to investigate, having a more comprehensive understanding of the numerous powers available may assist the minority in developing unique, customized approaches to their investigative objectives.

⁴⁶⁹ The organizing principle of such an effort could be Lord Acton's famous warning that "power tends to corrupt and absolute power corrupts absolutely." Letter from John Emerich Edward Dalberg, Lord Acton, to Bishop Creighton, Acton-Creighton Correspondence 9 (Apr. 5, 1887).

⁴⁷⁰ Democrats made the "affordability crisis" a core messaging topic in elections in New Jersey and Virginia in 2025, as well as ahead of the mid-term congressional elections in 2026. See Lisa Lerer & Jonah Smith, *How Democrats Used One Word to Turn the Tide Against Trump*, N.Y. TIMES (Dec. 20, 2025), <https://www.nytimes.com/2025/12/20/upshot/affordability-democrats-trump.html> [<https://perma.cc/9EGM-ZMHW>]. Some urged Democrats to combine the framing of corruption and the affordability crisis, and some members of the minority began doing so. See William Kristol, Andrew Egger & Jim Swift, *Every Day, Another Grotesque Secret*, BULWARK (Sep. 9, 2025), <https://www.thebulwark.com/p/every-day-another-grotesque-secret> [<https://perma.cc/Q6HN-AC78>] (describing memo from Jesse Lee and Ashley Etienne encouraging Democratic leaders to "fit their currently preferred anti-Trump messaging—centered on cost-of-living—into a culture-of-corruption frame"); Dan Merica & Matthew Choi, *Democrats Seek Electoral Success in Linking Costs with Corruption*, WASH. POST (Nov. 19, 2025), <https://www.washingtonpost.com/politics/2025/11/19/democrats-seek-electoral-success-linking-costs-with-corruption/> [<https://perma.cc/R6Q8-EQDC>] (describing efforts by Defend the Vote to link affordability and corruption and featuring Rep. Ro Khanna's "straightforward way to tie cost concerns to another top issue: corruption").

⁴⁷¹ See, e.g., DEMOCRATIC STAFF, JOINT ECON. COMM., NEW DATA: FAMILIES PAID \$310 MORE FOR GROCERIES DURING TRUMP'S FIRST YEAR IN OFFICE (Jan. 2026), https://www.jec.senate.gov/public/_cache/files/8094f43f-cbc9-4d83-b5cc-273fac048f32/jec-grocery-costs-final-1-.pdf [<https://perma.cc/D9FW-V2BC>] (nationwide survey of grocery prices); Democratic Staff, H. Comm. on Budget, *The Republican Health Care Crisis: Higher Costs, Less Coverage*, H. COMM. ON THE BUDGET, <https://democrats-budget.house.gov/legislation/republicanhealth-carecrisis> [<https://perma.cc/Z8CS-58TH>] (last visited Feb. 5, 2026) (interactive website with district-level data on loss of coverage and increasing costs). Republican minorities have conducted similar efforts in the past. See Repub. Staff, Joint Econ. Comm., *State Inflation Tracker* (2021), <https://www.jec.senate.gov/public/index.cfm/republicans/state-inflation-tracker> [<https://perma.cc/4L7W-Z7UK>] (website with links to inflation data in each state).

B. Operationalizing a Proactive Agenda

To move beyond Congress's siloed organizational structures, members of the minority could implement their own proactive agenda by coordinating resources and staff across Capitol Hill in innovative new ways. Although there are challenges with this approach, the minority could focus resources more intentionally on robust long-term proactive approaches rather than on short-term reactive defensive tasks within the narrow lanes of committee jurisdictions.

To develop an agenda of their own, House and Senate minority party leaders or committee ranking members could convene to develop a list of top priorities to which they, as a party, will devote time and resources. Admittedly, agreeing on these items could be challenging, but engaging in the discussion, as minority members on some individual committees have done, would have its benefits.⁴⁷² These priorities would not be talking points, but action items for proactive work the minority would conduct in coordination across offices and in addition to their defensive obligations. There have been reports that House Minority Leader Jeffries has initiated this type of effort and has begun developing "an initial set of principles based around affordability, health care and ending government corruption."⁴⁷³

Apart from developing this minority agenda, an equally challenging issue is how to operationalize it. To do this, the minority members of each committee could make the decision to wall off at least some of their staff to deliver work products that relate directly to the minority's agenda. Spending less time preparing for a majority hearing, for example, and more time preparing for a minority forum may better serve the minority's objectives. Taking this step can be difficult when the minority already faces such heavy workloads, but cordoning off staff is critical when majority demands are so persistent.⁴⁷⁴ Freeing staff time also could allow greater collaboration among committees, with personal offices and leadership organizations, and across the House and Senate.⁴⁷⁵

⁴⁷² See, e.g., Democratic Members, H. Comm. on Oversight & Gov't Reform, *Oversight Committee Democrats' Proactive Agenda*, <https://web.archive.org/web/20240921050445/https://oversightdemocrats.house.gov/agenda> [<https://perma.cc/34F5-4L3N>].

⁴⁷³ See, e.g., Marianna Sotomayor, *Inside the Democratic Plan to Recapture the House Majority in 2026*, WASH. POST (Sep. 3, 2025), <https://www.washingtonpost.com/politics/2025/09/03/democrats-2026-midterms-agenda-hakeem-jeffries-trump/> [<https://perma.cc/N6T5-LJQ5>] (describing efforts to develop a proactive agenda).

⁴⁷⁴ This is occurring to an extent with the House Rapid Response Task Force and Litigation Working Group, although it focuses primarily on litigation. See *supra* note 445.

⁴⁷⁵ See, e.g., Sen. Elizabeth Warren & Rep. Elijah Cummings, *Free the Middle Class*, USA TODAY (Feb. 23, 2015), <https://www.usatoday.com/story/opinion/2015/02/23/middle-class-prosperity-economics-column/23700779/> [<https://perma.cc/9B8Y-267H>] (announcing launch of "Middle Class Prosperity Project" as joint effort to conduct minority investigations, hold events, and issue reports through their positions as ranking members); see also Richard J. Kessler, *Democrats Must Build a New Consensus on Democracy, Economy*, PORTLAND PRESS HERALD (May 26, 2025), <https://www.pressherald.com/2025/05/26/>

Some may ask why the current minority is not using more of the tools described above already, as well as cordoning off staff, combining forces, and developing more proactive work product. Perhaps the most daunting challenge is that Congress is stovepiped by design.⁴⁷⁶ There are 541 senators, representatives, and delegates, dozens of committee and leadership offices, and multiple parallel political organizations, each with its own staff and messaging apparatus.⁴⁷⁷ Although scholars have highlighted the benefits of party cohesion among the minority,⁴⁷⁸ organizing across these disparate offices can be difficult.⁴⁷⁹

The minority also faces disadvantages in resources and communications. For example, regardless of the number of majority and minority members in the House, committee budgets are generally allocated based on a ratio of two to one, meaning the minority has half the budget and staff as the majority.⁴⁸⁰ Given how taxed minority staff are with preparing for and defending against majority actions, redirecting limited resources to minority projects may seem like a heavy lift. Making matters worse, for many years there has been extremely high turnover of experienced congressional staff with knowledge of these procedures.⁴⁸¹ In addition, the majority controls information about scheduling hearings and markups, invites witnesses, brings measures to the floor, and coordinates with an administration of the same party. It is easier for the majority to plan their actions in advance than for the minority to respond when they have been in the dark. This challenge has been aggravated by the

democrats-must-build-a-new-consensus-on-democracy-economy-opinion/ [https://perma.cc/9M32-PPGX] (proposing bicameral Committee to Preserve and Strengthen Our Democracy and Economy).

⁴⁷⁶ See Lisa Schultz Bressman & Abbe R. Gluck, *Statutory Interpretation from the Inside—An Empirical Study of Congressional Drafting, Delegation, and the Canons: Part II*, 66 STAN. L. REV. 725, 738–39 (2014) (“The committee system divides policymakers into ‘silos’ that do not communicate with one another, a fragmentation exacerbated by the separate and different roles that noncommittee leadership staff and personal staff play in the drafting process.”).

⁴⁷⁷ See generally JENNIFER E. MANNING, CONG. RSCH. SERV., R48535, MEMBERSHIP OF THE 119TH CONGRESS: A PROFILE (2025).

⁴⁷⁸ See generally Ballard & Curry, *supra* note 17.

⁴⁷⁹ See *Building a More Civil and Collaborative Culture in Congress: Hearing Before the H. Select Comm. on the Modernization of Cong.* at 2, 117th Cong. (2021) (containing observation by Chairman Derek Kilmer (D-Wa.) that members of Congress resemble “independent contractors, all loosely affiliated with one of two general contractors, that appear to be in a high-stakes competition for market share”).

⁴⁸⁰ See IDA A. BRUDNICK, CONG. RSCH. SERV., RL32794, HOUSE COMMITTEE FUNDING: PROCESS AND HISTORICAL APPROPRIATIONS AND AUTHORIZATIONS 7 (2025); cf. STANDING RULES OF THE SENATE, R. XXVII(3), S. DOC. NO. 113-18, at 39 (2013) (apportioning committee staff based on relative number of majority and minority Senators).

⁴⁸¹ See, e.g., ALEXANDER C. FURNAS & TIMOTHY M. LAPIRA, CONG. BRAIN DRAIN: LEGIS. CAPACITY IN THE 21ST CENTURY, NEW AMERICA (2020); see Caleb Mynatt, *Revolving Door Staff on Track to Set New Annual Record*, LEGISTORM (Nov. 17, 2025), https://www.legistorm.com/pro_news/4350/revolving-door-staff-on-track-to-set-new-annual-record.html [https://perma.cc/BCQ6-PDGP].

Trump administration, which prides itself on “flooding the zone” to fragment opposition.⁴⁸²

In addition to these challenges, some senior ranking members of the minority party may be hesitant to participate in a leadership-driven process they perceive as further surrendering the authority and status they have built over many years to become committee leaders.⁴⁸³ This concern is not baseless, as congressional reform advocates have decried the centralization of power in leadership over the past several decades and have proposed returning some measure of that power to committees and bipartisan factions.⁴⁸⁴ The proposal to better coordinate minority investigative efforts, however, need not be dictated from either chamber’s minority leader. Instead, committee ranking members could lead this effort, and their buy-in and subject matter expertise could make it more effective as a result. They could establish a process with their own information-sharing hub to determine priorities, avoid duplication of effort, and coordinate the timing of work product releases. In any case, overcoming an overly narrow focus on protecting fiefdoms could serve both minority objectives of mitigating harm and enhancing electoral prospects.

Another challenge is that the current majority is curtailing minority rights at a more accelerated pace than at any time in recent memory. As the survey above demonstrates, in 2025 alone, Senate Republicans not only changed the filibuster process to allow en bloc confirmations of nominees, but also skirted filibuster rules when they struck down California’s plan to phase out gasoline

⁴⁸² See Scott L. Cummings, *The Autocratic Legal Playbook 5* (UCLA Sch. of Law Public Law & Legal Theory Paper No. 25-31, 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5392409 [<https://perma.cc/VFZ6-NV8K>] (analyzing “the Trump 2.0 strategy of ‘flooding the zone’ with executive orders”).

⁴⁸³ See, e.g., Daniel J. Evans, *Why I’m Quitting the Senate*, N.Y. TIMES (Apr. 17, 1988), <https://www.nytimes.com/1988/04/17/magazine/why-i-m-quitting-the-senate.html> [<https://perma.cc/B99F-AK2D>] (decrying “the chaos of a hundred independent fiefdoms”).

⁴⁸⁴ See, e.g., Taylor Swift, *Cooking with Gas*, FIRST BRANCH FORECAST (Jan. 17, 2023), <https://firstbranchforecast.com/2023/01/17/first-branch-forecast-for-january-17-2023-cooking-with-gas/> [<https://perma.cc/SN5Z-QQHU>] (noting that party leaders “prioritized unity to consolidate their own power” and “advanced issues they believed advantaged the party and buried those for which coalitions across factions of the parties may have formed”); DANIEL SCHUMAN & ZACH GRAVES, *RENOVATING THE PEOPLE’S HOUSE 24* (2024), <https://americalabs.org/wp-content/uploads/2024/08/Renovating-the-Peoples-House.pdf> [<https://perma.cc/366S-9CGW>] (offering proposals for democratizing chamber management); Lauren Fromkin, *Cleaning Up House: Reforms to Empower U.S. House Committees*, BIPARTISAN POL’Y CTR. (Feb. 15, 2024), <https://bipartisanpolicy.org/article/reforms-to-empower-house-committees/> [<https://perma.cc/E3R6-RUS4>] (describing transfer of power from committees to party leadership and offering proposals); ALEX TAUSANOVITCH, *PROTECT DEMOCRACY, DEMOCRATIZE CONGRESS 6–7* (2025), <https://protectdemocracy.org/wp-content/uploads/2025/09/Democratize-Congress.pdf> [<https://perma.cc/K5KB-RUY6>] (noting historical periods when party leaders did not have such concentrated power); JAMES WALLNER & SOREN DAYTON, *FOUND. FOR AM. INNOVATION, REBUILDING CONGRESS FROM WITHIN: HOW FACTIONS FACILITATE DELIBERATION AND LAWMAKING 1* (2026), <https://cdn.sanity.io/files/d8lrla4f/staging/656f4d38bfbd435c0327bd0a3550ebc77b9e146.pdf> [<https://perma.cc/P5MU-ND3K>] (proposing alternatives to “a centralized process dominated by party leaders that makes it harder for rank-and-file lawmakers to influence the legislative process”).

powered cars and passed President Trump's One Big Beautiful Bill. In the House, the majority effectively eliminated resolutions of inquiry, broke the previous record for the most "closed rules" on the House floor, and blocked the minority's right to move to end President Trump's tariffs under the fast track procedure set forth in the National Emergencies Act in March, April, and September of 2025,⁴⁸⁵ although efforts to continue to block tariff votes collapsed in 2026 with several Republican defections.⁴⁸⁶ Given the House's slim margin, the use of discharge petitions has been more successful,⁴⁸⁷ and the favorable Epstein discharge petition prompted other successful efforts, including on legislation to extend ACA subsidies.⁴⁸⁸ However, Speaker Johnson is reportedly considering changes to limit the use of that tool as well.⁴⁸⁹ There are certainly numerous examples of Democrats curtailing minority rights when they were in power.⁴⁹⁰ But the actions of the current majority are creating an increasingly hostile environment for the minority to conduct investigations.

There may be several explanations for this phenomenon. For example, by almost any measure, partisanship has been on the rise,⁴⁹¹ and many potential

⁴⁸⁵ See Catie Edmondson, *Republicans Quietly Cede Power to Cancel Trump's Tariffs, Avoiding a Tough Vote*, N.Y. TIMES (Mar. 11, 2025), <https://www.nytimes.com/2025/03/11/us/politics/trump-tariffs-house-gop-vote.html> [<https://perma.cc/VUM9-C4G7>]; Robert Jimison, *House Republicans Move to Prevent Vote on Repealing Trump's Tariffs*, N.Y. TIMES (Apr. 9, 2025), <https://www.nytimes.com/2025/04/09/us/politics/house-republicans-trump-tariffs-vote.html> [<https://perma.cc/BTQ9-CDC6>]; Robert Jimison, *G.O.P. Again Cedes Power on Tariffs to Avoid Crossing Trump*, N.Y. TIMES (Sep. 16, 2025), <https://www.nytimes.com/2025/09/16/us/politics/republicans-house-tariffs-emergency-trump.html> [<https://perma.cc/6UCL-R3HA>].

⁴⁸⁶ See Mia McCarthy & Daniel Desrochers, *GOP Revolt Sinks Effort to Block Votes on Trump's Tariffs*, POLITICO: INSIDE CONGRESS LIVE (Feb. 10, 2026, at 22:04 ET), <https://www.politico.com/live-updates/2026/02/10/congress/gop-revolt-sinks-effort-to-block-votes-on-trumps-tariffs-00775107> [<https://perma.cc/VZ9K-7VCV>] (describing failed vote of 214 to 217). This was followed the next day with a House vote to end tariffs related to Canada, but as Speaker Johnson pointed out, President Trump could veto the resolution without a two-thirds majority to override it. Kyle Stewart & Kyla Guilfoil, *House Votes to Nix Trump's Tariffs on Canada in Rebuke of Trade Agenda*, NBC NEWS (Feb. 11, 2026, at 20:33 ET), <https://www.nbcnews.com/politics/congress/house-votes-end-trump-tariffs-canada-rca258661> [<https://perma.cc/9F88-8XTU>].

⁴⁸⁷ See Image and Comment posted by Sarah Binder (@sarahbinder.bsky.social), BLUESKY (Dec. 17, 2025, at 14:43 ET), <https://bsky.app/profile/sarahbinder.bsky.social/post/3ma7gb5nu3k2p> [<https://perma.cc/8SPX-HSWT>] (comparing recent successes of discharge petitions against historical trends).

⁴⁸⁸ See Max Spitzer & Alex Tausanovitch, *Congress's 'Hidden Majorities'*, IF YOU CAN KEEP IT (Jan. 9, 2026), <https://www.ifyoucankeepit.org/p/congress-hidden-majorities> [<https://perma.cc/DHA8-CW9E>] (describing the ACA and other successful discharge petitions as a positive development that "signals a willingness of members to engage in bipartisan legislating, even at the cost of defying their party leaders").

⁴⁸⁹ See Kate Santaliz, *Scoop: Mike Johnson Wants Changes After Being Outflanked on Epstein Files*, AXIOS (Nov. 20, 2025), <https://www.axios.com/2025/11/21/mike-johnson-house-discharge-petitions-epstein> [<https://perma.cc/8VFK-ZYZ7>].

⁴⁹⁰ See *supra* Part III.A.4 (discussing House Democrats' restrictions on resolutions of inquiry); Part III.C.5 (discussing House Democrats' elimination of instructions for MTRs); and Part V.B (discussing Senate Democrats' changes to filibuster rules).

⁴⁹¹ See, e.g., PEW RSCH. CTR., *PARTISAN ANTI-PATHY: MORE INTENSE, MORE PERSONAL 5* (2019), <https://www.pewresearch.org/politics/wp-content/uploads/sites/4/2019/10/10-10-19-Parties-report.pdf> [<https://perma.cc/JG86-553E>] (finding deepening animosity since 2016);

causes have been suggested.⁴⁹² Political scientist Sarah Binder, in her seminal work on minority rights in Congress, compiled a comprehensive list of amendments that curtailed procedural rights in House and Senate rules from 1789 to 1994.⁴⁹³ Based on her review, she discounted historical theories that explained limitations on minority rights as the result of non-partisan collective institutional concerns, such as increased workload.⁴⁹⁴ She also challenged theories offered prior to 1994 that more frequent turnovers of control would cause both parties to “develop an institutional memory of life in both positions and, by implication, would be more likely to favor a more equitable distribution of procedural rights.”⁴⁹⁵ Instead, she offered a theory of partisan procedural choice in which the allocation of chamber rights is motivated primarily by short-term political advantage.⁴⁹⁶

Clio Andris, David Lee, Marcus J. Hamilton, Mauro Martino, Christian E. Gunning & John Armistead Selden, *The Rise of Partisanship and Super-Cooperators in the U.S. House of Representatives*, 10 PLOS ONE (2015), <https://doi.org/10.1371/journal.pone.0123507> [<https://perma.cc/B6EB-2576>] (measuring cooperation between elected officials of different parties); Paul Hofmarcher, Jan Vavra, Sourav Adhikari & Bettina Grün, *Revisiting Group Differences in High-Dimensional Choices: Method and Application to Congressional Speech*, 40 J. APPLIED ECONOMETRICS 577 (2024) (measuring partisan speech); Jonathan Oberlander, *Polarization, Partisanship, and Health in the United States*, 49 J. HEALTH POL., POL'Y & LAW 329, 329–32 (2024) (measuring increases in votes along party lines, attempts to block judicial nominees, use of filibuster, and others).

⁴⁹² Some suggested causes for increasing polarization include gerrymandering that disfavors moderate candidates, pressures of social media and the 24-hour news cycle, the centralization of power among congressional leadership, and the unique attributes of the Trump phenomenon. See, e.g., Micah Altman & Michael McDonald, *Redistricting and Polarization*, in AMERICAN GRIDLOCK: THE SOURCES, CHARACTER, AND IMPACT OF POLITICAL POLARIZATION 45–52 (James A. Thurber & Antoine Yoshinaka eds., 2015) (examining gerrymandering disfavoring moderate candidates); JILL EDY & PATRICK C. MEIRICK, A NATION FRAGMENTED: THE PUBLIC AGENDA IN THE INFORMATION AGE (2019) (describing how cable news and social media have fragmented the public agenda); LEE, *supra* note 27, at 2, 8, 12 (describing modern era of intensifying conflict as a result of party competition for majority control with narrowing margins); Joseph Postell, *The Decision of 1946: The Legislative Reorganization Act and the Administrative Procedure Act*, 28 G.M. L. REV. 609, 637–38 (2021) (describing historical and more recent changes in power dynamics between committee chairs and leadership); Nathan Canen, Chad Kendall & Francesco Trebbi, *Unbundling Polarization*, 88 ECONOMETRICA 1197, 1222 (2020) (showing that ideological commitments diverge “across party lines”); Alan Abramowitz & Jennifer McCoy, *United States: Racial Resentment, Negative Partisanship, and Polarization in Trump’s America*, 681 ANNALS AM. ACAD. POL. & SOC. SCI. 137, 150 (2019) (discussing how rhetoric regarding President Trump’s efforts to advance conservative ends through the judiciary hardened ideological polarization into partisan polarization). *But see* Sean J. Westwood, Erik Peterson & Yphtach Lelkes, *Are There Still Limits on Partisan Prejudice?*, 83 PUB. OP. Q. 584, 585 (2019) (finding “no evidence of general increase in partisan prejudice”).

⁴⁹³ BINDER, MINORITY RIGHTS, *supra* note 27, at app. 1.

⁴⁹⁴ See *id.* at 6–9, 203–04 (discussing studies prior to 1992).

⁴⁹⁵ Compare *id.* at 9–10, 204 (finding little evidence that “long-term calculations affect procedural choices in either chamber”), with THOMAS E. MANN & NORMAN J. ORNSTEIN, RENEWING CONGRESS: A FIRST REPORT at 1 (American Enterprise Institute & The Brookings Institution 1993) (explaining that “every two decades or so . . . Congress moves to reform itself”).

⁴⁹⁶ See *id.* at 204–05 (also discussing factors of partisan need, capacity, and inertia of inherited rules).

What has happened since then with respect to minority investigative rights appears to bear this out. Control of the House or Senate has changed thirteen times since 1994, but rather than enhancing minority rights in line with the theory that today's majority may be tomorrow's minority, minority rights have been reduced.⁴⁹⁷ As discussed above, since 1994, committees have authorized more of their chairs to issue unilateral subpoenas, a stark change from previous practice in which minority members played more significant roles. Changes to the filibuster show a similar trend despite multiple changes in Senate control. After Democrats removed the filibuster for lower-level nominees in 2013, the subsequent flip in Senate control resulted not in Republicans restoring the filibuster for those nominees, but in diluting it further to exclude Supreme Court nominees in 2017, reduce debate time on nominees from thirty to two hours in 2019, and allow en bloc confirmations in 2025.⁴⁹⁸

Other theories have sought to explain the expansion or contraction of minority rules, but most are limited to intra-chamber dynamics.⁴⁹⁹ Although a full examination of the root causes of these trends is beyond the scope of this Article, it appears that minority rights may be particularly vulnerable when one party controls both chambers, the presidency, and the Supreme Court, not to mention circumstances like the present when six Justices have been appointed by presidents of the same party.⁵⁰⁰ Having control of Congress and the White House may be rare, but also having a supermajority on the Court may create once-in-a-generation incentives for the majority to press its agenda as aggressively as possible and sideline the minority in the process.⁵⁰¹

⁴⁹⁷ *Party Government Since 1857*, U.S. HOUSE OF REPS.: HIST., ART & ARCHIVES, <https://history.house.gov/Institution/Presidents-Coinciding/Party-Government/> [<https://perma.cc/L6AE-NN6K>]; LEE, *supra* note 27, at 6, 10, 19 (highlighting the “creation and institutionalization of partisan public-relations operations,” observing that “the minority party in Congress stands to gain political benefit from strategically resisting the majority,” and contending that the “conventional wisdom that there is a dominant party in American politics is dead and has been for a long time”).

⁴⁹⁸ See MICHAEL GREENE & ELIZABETH RYBICKI, CONG. RSCH. SERV., R48729, CONSIDERATION OF NOMINATIONS EN BLOC: REINTERPRETATION OF SENATE RULES (Nov. 14, 2025); Nathan A. Williams, *Rejecting the Confirmation Process: Modern Standards for Investigating Nominees to the Supreme Court*, 19 GEO. J. L. & PUB. POL'Y 317, 318–19 (2021).

⁴⁹⁹ See, e.g., GARY W. COX & MATHEW D. McCUBBINS, SETTING THE AGENDA: RESPONSIBLE PARTY GOVERNMENT IN THE U.S. HOUSE OF REPRESENTATIVES 1–13 (2005) (proposing “cartel” theory); Krehbiel & Meirowitz, *supra* note 20 (proposing pure preference theory); John H. Aldrich & David W. Rohde, *The Consequences of Party Organization in the House*, in POLARIZED POLITICS: CONGRESS AND THE PRESIDENT IN A PARTISAN ERA 33 (Jon R. Bond & Richard Fleisher eds., 2000) (proposing “conditional party government” theory); cf. Josh M. Ryan, *Bicameralism and Minority-Party Influence on Legislative Development: Evidence from House Standing Committee Votes*, 45 LEGIS. STUD. Q. 365 (2020) (analyzing impact of filibuster on House votes).

⁵⁰⁰ *Current Members*, SUPREME COURT OF THE U.S. <https://www.supremecourt.gov/about/biographies.aspx> [<https://perma.cc/LV8J-TEW8>] (last visited Feb. 17, 2026).

⁵⁰¹ See Thomas B. Edsall, *The Supreme Court Has Finally Found a President It Likes*, N.Y. TIMES (Aug. 5, 2025), <https://www.nytimes.com/2025/08/05/opinion/supreme-court-trump-administration.html> [<https://perma.cc/9N2G-MYPB>]; see also *Party Government Since 1857*, *supra* note 497 (noting that the same party has controlled the House, Senate, and White House forty-eight times since 1857); *Justices 1789 to Present*, SUPREME COURT OF THE U.S., <https://>

C. Local Engagement

In addition to transcending the traditional stovepiped structures of Congress by coordinating staff and resources on more proactive work, minority members could move beyond Washington, D.C. to better connect their agenda to local constituencies. In other words, they could spend less time and fewer resources in the Capitol defending against majority priorities and begin using their proactive work to drive greater engagement in their home states and districts. In addition, instead of treating their Washington and district offices as siloed entities that handle legislative matters on one hand and casework on the other, minority members could unify their staffs with the common purpose of delivering proactive work product that both informs and is responsive to local networks.⁵⁰²

For example, when he served as the ranking minority member of the House Oversight Committee, Representative Henry Waxman cordoned off some of his minority committee staff to focus on proactive priorities, and he produced hundreds of minority reports for members of the House and Senate, which they used to anchor panels, press conferences, and other events in their home states.⁵⁰³ Representative Waxman also pioneered a specific type of minority report known as a district level report. He directed minority staff to collect data from existing databases, conduct their own surveys, and gather information from public and non-public sources to create template reports that could be replicated for each congressional district. Using this model, he issued reports on issues ranging from healthcare⁵⁰⁴ to education⁵⁰⁵

www.supremecourt.gov/about/members_text.aspx [https://perma.cc/S7Q8-HNDV] (last visited Feb. 17, 2026) (noting that thirty-three of these instances coincided with a majority of Justices having been appointed by presidents of the majority party). The last time there was unified party control of the House, Senate, and White House with a supermajority on the Supreme Court was from 2005 to 2007 under President George W. Bush. *But see* Frances E. Lee, *The 115th Congress and Questions of Party Unity in a Polarized Era*, 80 J. POL. 1464, 1464 (2018) (noting that “the legislative record of the 115th Congress has been less impressive than that of other recent majority parties in control of unified government”).

⁵⁰² This proposal aligns with recommendations by the Congressional Management Foundation to build and sustain cohesive, collaborative operations among D.C. and district offices instead of “operating in silos.” *See* CONG. MGMT. FOUND., *KEEPING IT LOCAL: A GUIDE FOR MANAGING CONGRESSIONAL DISTRICT & STATE OFFICES* ix (4th ed. 2025). *But see* Jaclyn Kaslovsky, *Senators at Home: Local Attentiveness and Policy Representation in Congress*, 116 AM. POL. SCI. REV. 2, 2 (2021) (finding that “local attention does not always cultivate goodwill in the district”).

⁵⁰³ ROSENBERG, *supra* note 119, at 144–46 (describing the “Waxman model” and the “Special Investigations Division” of minority staff focusing on proactive agenda items).

⁵⁰⁴ *See, e.g.*, MINORITY STAFF OF H. COMM. ON GOV’T REFORM & OVERSIGHT, 105TH CONG., *REPORT ON PRESCRIPTION DRUG PRICING IN THE 1ST CONGRESSIONAL DISTRICT IN MAINE: DRUG COMPANIES PROFIT AT THE EXPENSE OF OLDER AMERICANS* (Comm. Print 1998) (based on minority staff survey of prices of brand name drugs with highest sales to elderly in the district).

⁵⁰⁵ *See, e.g.*, MINORITY STAFF OF H. COMM. ON GOV’T REFORM, 106TH CONG., *REPORT ON CLASS SIZES IN GRADES K-3 IN BEAVERTON SCHOOL DISTRICT* (Comm. Print 1999) (based on unpublished survey data from the state Department of Education).

to veterans.⁵⁰⁶ Representative Waxman was able to generate a high volume at a rapid pace by standardizing formats.⁵⁰⁷ Importantly, rather than issuing reports exclusively through press releases—which might receive only passing attention—members held in-person events in their districts to showcase these reports, connect with constituents, and generate significant local press in ways that participating in majority-controlled hearings in Washington seldom provides.⁵⁰⁸

By expanding this model to other committees and staffs, minority members could increase their proactive output, generate more local press coverage, and provide tailored information that is useful to their constituents, all while boosting their electoral prospects. These reports could be customized based on programs each committee oversees. For example, they could focus on families struggling with escalating consumer prices,⁵⁰⁹ small businesses and large corporations coping with increasing prices on imports,⁵¹⁰ or seniors in nursing homes and assisted living facilities facing cuts to Medicaid.⁵¹¹ Some offices have already been compiling this type of district-level data, but linking their efforts to local events could help members pursue the benefits of direct engagement at state and local levels.⁵¹²

Another benefit to this approach would be increased engagement with, and mobilization of, local networks of constituents. Supporters have been urging the minority to mount a more forceful opposition, and an increased focus on local engagement could help channel these efforts towards legislative

⁵⁰⁶ See, e.g., MINORITY STAFF OF H. COMM. ON GOV'T REFORM, 106TH CONG., REPORT ON WAITING TIMES FOR VETERANS HEALTH CARE IN OHIO (Comm. Print 2003) (based on waiting time data obtained from the Department of Veterans Affairs).

⁵⁰⁷ See *id.*

⁵⁰⁸ See, e.g., Nathan J. Tohtsoni, *Rep. Udall: Rein in Drug Firms*, FARMINGTON DAILY TIMES, Mar. 31, 1999, at A7 (describing “whirlwind tour” of twelve New Mexico towns highlighting district report prepared by Rep. Waxman).

⁵⁰⁹ See Colby Smith, *U.S. Inflation Accelerated in June as Trump's Tariffs Pushed Up Prices*, N.Y. TIMES (July 16, 2025), <https://www.nytimes.com/2025/07/15/business/cpi-report-inflation-june.html> [<https://perma.cc/KG5T-LKQF>].

⁵¹⁰ See Tim Hopher & Karl Plume, *Corporate Gloom Deepens as New Trump Tariffs Take Effect*, REUTERS (Mar. 12, 2025, at 15:18 ET), <https://www.reuters.com/business/retail-consumer/corporate-gloom-deepens-new-trump-tariffs-take-effect-2025-03-12/> [<https://perma.cc/JLY2-Y4AE>].

⁵¹¹ See Andrew Christman, *Proposed Medicaid Cuts Could Hurt Access, Care for Assisted Living Residents*, SENIOR HOUSING NEWS (Feb. 26, 2025), <https://seniorhousingnews.com/2025/02/26/proposed-medicaid-cuts-could-hurt-access-care-for-assisted-living-residents/> [<https://perma.cc/JP8T-8AXN>].

⁵¹² See, e.g., *Resources for Congressional Districts*, REG'L LEADERSHIP COUNCIL, <https://rlc.house.gov/resources/congressional-districts> [<https://perma.cc/A2XM-PATS>] (last visited March 6, 2026) (minority House organization chaired by Rep. Steny Hoyer (D-Md.) linking “District Briefings” on healthcare, environment, technology, and other topics); *Minority Website: The Republican Budget Bill in Your District*, H. COMM. ON THE BUDGET (last updated Dec. 3, 2025) <https://democrats-budget.house.gov/legislation/onebiguglybill> [<https://perma.cc/FND4-4ZD7>] (database searchable by congressional district).

and electoral campaigns.⁵¹³ Members and outside groups have made several proposals to capture this energy, including through local “resistance labs”⁵¹⁴ and “civil society field hearings.”⁵¹⁵ Several organizations have begun issuing their own district-level data as well.⁵¹⁶ Minority efforts could dovetail with grassroots campaigns that have been successfully utilizing local engagement as a key strategy. For example, drawing on research into the success of historical efforts to counter authoritarian governments,⁵¹⁷ the “No Kings” protests drew increasing numbers of participants not by organizing a single protest in Washington D.C., but by promoting hundreds of rallies in localities in all fifty states.⁵¹⁸ Organizers prioritized local engagement to successfully build and maintain momentum across the country, including in areas considered majority strongholds.⁵¹⁹ Minority members could not only tap into these types of movements by offering their own proactive work at the local level, but they could actively fuel them with dozens of local events showcasing multiple customized reports produced by their coordinated minority staffs. Ranking members could join district representatives, state delegations, and other members in highlighting the results of their work at local events, on local news broadcasts, and with local constituent organizations. As noted, this would require a significant commitment of staffing, time, and resources, but such a dedicated effort could result in much more widespread and lasting benefits than merely sending a tweet.

⁵¹³ See Katie Glueck & Reid J. Epstein, *Frustrated Democrats Urge Leaders to Show More Fight Against Trump*, N.Y. TIMES (Mar. 14, 2025), <https://www.nytimes.com/2025/02/22/us/politics/democrats-trump.html> [<https://perma.cc/EVL5-WBE2>].

⁵¹⁴ See Joan Walsh, *Pramila Jayapal: “We Have to Stand Up and Fight Back,”* THE NATION (Mar. 27, 2025), <https://www.thenation.com/article/politics/pramila-jayapal-resistance-lab/> [<https://perma.cc/HKA3-GWLY>].

⁵¹⁵ See Lorelei Kelly, *From Resistance to Resilience: A Strategic Guide for Organizing Civil Society Field Hearings*, CTR. FOR EMERGENT DIPLOMACY (2025).

⁵¹⁶ See, e.g., *Data on Local Impacts*, CO-EQUAL, <https://www.co-equal.org/data-on-local-impacts> [<https://perma.cc/J2P6-GGAD>] (last accessed Jan. 21, 2026) (containing district and state data on effects of increased tariffs, consumer prices, and other issues); *Federal Harms Tracker: The Cost to Your Community*, P'SHIP FOR PUB. SERV., <https://ourpublicservice.org/federal-harms-tracker/cost-to-your-government/> [<https://perma.cc/8LG8-RBKH>] (last accessed Jan. 21, 2026) (website with district and state data on effects of cuts to federal personnel, funding, and infrastructure).

⁵¹⁷ See, e.g., Erica Chenoweth, *Questions, Answers, and Some Cautionary Updates Regarding the 3.5% Rule*, HARV. KENNEDY SCH.: CARR-RYAN CTR. FOR HUM. RTS. POL'Y (April 2020) (also describing other factors contributing to success including non-violence and momentum).

⁵¹⁸ See, e.g., Rachel Maddow & Allison Detzel, ‘3.5% Rule’: *The Anti-Trump Movement is Nearing an Important Threshold*, MADDOW BLOG (Oct. 21, 2025, at 15:22 ET), <https://www.ms.now/rachel-maddow-show/maddowblog/no-kings-protests-trump-successful-anti-authoritarian-movements-rcna238949> [<https://perma.cc/M69J-6HCH>] (noting increases in 2025 from an estimated three million people in April to five million people in June to seven million people in October).

⁵¹⁹ See Christopher Shay, Erica Chenoweth, Jeremy Pressman & Soha Hammam, *The Resistance Reaches into Trump Country*, HARV. KENNEDY SCH.: ASH CTR. FOR DEMOCRATIC GOVERNANCE & INNOVATION (Oct. 16, 2025), <https://ash.harvard.edu/resources/the-resistance-reaches-into-trump-country/> [<https://perma.cc/9NHK-FBK7>].

D. Pursuit of Bipartisanship

One critique of these proposals is that they could exacerbate the trend of increasing partisanship. By even partially absenting themselves from official congressional structures and proceedings, the minority might forgo opportunities for bipartisanship, despite how seldom they arise. What is needed, some might argue, are proposals to divert efforts away from deepening partisan divides and redirect them towards the bipartisan goals of negotiation, accommodation, and civil discourse.⁵²⁰ The review above documents how minority rights are being curtailed, but some may say these proposals could further separate the parties.

It may be tempting to respond in partisan terms, arguing that members of the current majority have shown themselves to be qualitatively different in their willingness to sacrifice Congress's institutional interests to pursue partisan advantage.⁵²¹ Whether or not this is true, it does not answer the question of how to reverse the trend. Understanding the incentives of unified party control at the present historical moment may help explain the current majority's actions, but not necessarily how to correct them. Winning future elections holds the promise of change, but it comes with the ascending party's understandable reticence to unilaterally disarming and, to put it bluntly, being played for chumps.⁵²²

Tackling this challenge is daunting, and I cannot do it justice here, but based on the review above, I offer two modest proposals that demonstrate how the minority can serve its core interests by proactively pursuing opportunities for bipartisanship. First, as mentioned, the minority could establish more specific, concrete, and reasonable demands earlier in the process. The debacle early in 2025 with Minority Leader Schumer reversing his position on a Democratic filibuster generated significant consternation among his supporters and colleagues.⁵²³ Although he may have been correct about the risks of the approach, the electorate had little specific information about what the minority needed to support its position. This approach diminished the prospects of using leverage to obtain concessions or engage in negotiations with the other side. The minority may be able to achieve better results by using procedural tactics in conjunction with more specific demands. As a case in

⁵²⁰ See, e.g., David Leonhardt, *A New Centrist Is Rising in Washington*, N.Y. TIMES (May 19, 2024), <https://www.nytimes.com/2024/05/20/briefing/bipartisanship-congress-neopopulism.html> [<https://perma.cc/8H52-8VK2>].

⁵²¹ See Matt Grossman & David Hopkins, *Ideological Republicans and Group Interest Democrats: The Asymmetry of American Party Politics*, 13 PERSPS. ON POL. 119, 133–34 (2015).

⁵²² See, e.g., *Business Meeting Before the H. Comm. on Oversight & Reform*, 116th Cong., at 53:46 (Jan. 29, 2019) (containing Rep. Gerald Connolly's registration of his "deep reservation" with returning to the policy of minority consent or voting for subpoenas in light of Republicans' track record over the previous eight years).

⁵²³ See, e.g., *Pelosi Takes Jab at Schumer's Negotiating Skills*, CNN (May 19, 2025), <https://www.cnn.com/2025/03/19/politics/video/nancy-pelosi-comment-chuck-schumer-thompson-hunt-arena-digvid> [<https://perma.cc/7DFW-FDF9>].

point, the three specific demands set by the minority before the government shutdown in October 2025 were much clearer, more compelling, and based on priorities that resonated across the political spectrum.⁵²⁴ Minority Leader Jeffries repeatedly described the minority's demands in just eight words,⁵²⁵ and some Republicans expressed support, including Representative Marjorie Taylor Greene (R-Ga.).⁵²⁶ Sustaining their record-breaking filibuster for clear and widely supported demands served both minority goals of harm mitigation and possible future electoral success while in turn promoting future bipartisan legislative action.⁵²⁷

Second, minority members can make small, proactive proposals for collaboration with the majority that could evolve into true bipartisan successes. For example, when Representative Jason Chaffetz (R-Ut.) became Chair of the House Oversight Committee in 2015, Ranking Member Cummings approached him with several proposals. Before the Committee had its first meeting, they traveled to each other's districts to meet with officials and tour local sites.⁵²⁸ They also agreed on informal protocols, including exchanging draft letters and agreeing to send them together if possible. By the end of that Congress, they had sent more than 600 bipartisan letters.⁵²⁹

⁵²⁴ See Catie Edmondson, *Democrats Outline Spending Demands as Shutdown Looms*, N.Y. TIMES (Sep. 17, 2025), <https://www.nytimes.com/2025/09/17/us/politics/democrats-spending-demands-shutdown.html> [<https://perma.cc/2PXF-29CH>] (including restoring Medicaid funding cut in President Trump's One Big Beautiful Bill, extending pandemic-era tax credits under the ACA, and limiting President Trump's rescissions of congressionally appropriated funding); Naftali Bendavid & Yasmeen Abutaleb, *Democrats' Defiance on Shutdown Shows a New, Tougher Approach to Trump*, WASH. POST (Oct. 4, 2025), <https://www.washingtonpost.com/politics/2025/10/04/democrats-trump-shutdown-obamacare/> [<https://perma.cc/7Q6Z-9JQY>] (noting that the later approach "arguably marks the first time since Trump's election that the party has had a consistent message" and "represents a 180-degree shift from March").

⁵²⁵ See, e.g., Video posted by House Minority Leader Hakeem Jeffries (Congressman Hakeem Jeffries), FACEBOOK (Sep. 23, 2025), <https://www.facebook.com/RepJeffries/videos/cancel-the-cuts-lower-the-costs-save-healthcare-/799896532792792/> [<https://perma.cc/92YE-VL45>] ("Our top priority is to make sure that we cancel the cuts, lower the costs and save healthcare for the American people. That's eight words . . .").

⁵²⁶ See Brian Unger, *Georgia Voters React as Marjorie Taylor Greene Backs Obamacare Subsidies During Shutdown*, CBS NEWS (Oct. 13, 2025, at 07:19 ET), <https://www.cbsnews.com/atlanta/news/district-14-voters-react-as-marjorie-taylor-greene-backs-obamacare-subsidies-during-shutdown/> [<https://perma.cc/HYC6-4MTR>].

⁵²⁷ See, e.g., Annie Karni, *What if Democrats' Big Shutdown Loss Turns Out to Be a Win?*, N.Y. TIMES (Nov. 11, 2025), <https://www.nytimes.com/2025/11/11/us/politics/democrats-shutdown.html> [<https://perma.cc/SJ4U-AN5N>]; Hannah Knowles, Natalie Allison, Emily Davies & Theodor Meyer, *Democrats Lose Shutdown Battle—As Trump, Republicans Risk Losing War*, WASH. POST (Nov. 11, 2025), <https://www.washingtonpost.com/politics/2025/11/11/democrats-trump-shutdown-politics-midterms/> [<https://perma.cc/VD6J-3TY8>]; see also *supra* Part III.C.2 (describing the successful ACA subsidies discharge petition in the House).

⁵²⁸ See Dennis Romboy, *Ex-Utah Rep. Jason Chaffetz Recalls Rep. Elijah Cummings with Fondness*, DESERET NEWS (Oct. 17, 2019, at 09:01 MT), <https://www.deseret.com/utah/2019/10/17/20919038/elijah-cummings-jason-chaffetz-civility/> [<https://perma.cc/Y9DU-QZ35>].

⁵²⁹ See Rep. Elijah E. Cummings, *Opening Statement, Business Meeting Before the H. Comm. on Oversight & Gov't Reform*, 114th Cong. (2016) (noting milestone and suggesting it could be "a record for any Committee in a single Congress").

This collaboration developed into larger investigative and legislative achievements. For example, when reports emerged of Secret Service agents drinking excessively and crashing vehicles into the White House gates, Representatives Chaffetz and Cummings discussed the scope of a potential inquiry, agreed to continue exchanging draft letters, and conducted a bipartisan investigation with a unanimous final report.⁵³⁰ They also passed bipartisan legislation that was signed into law.⁵³¹ Proactively seeking out these small but important opportunities for bipartisanship is no panacea, but it may start to foster circumstances in which members spend an increasing amount of their time on bipartisan projects.

VI. CONCLUSION

President Trump's first hundred days after returning to office quickly forced Democrats to grapple with how best to confront their new reality facing unified party government. However, the all-or-nothing proposals that were being offered lacked sufficient nuance to thoughtfully consider possible ways forward. This survey is a first step toward mapping some of the tools and other powers that current and future minorities can utilize to achieve their investigative aims. Understanding and analyzing these powers is important not only for the party that happens to be in the minority, but also for the short- and long-term capacity of Congress to fulfill its constitutional duty to conduct investigations to ensure the Executive Branch faithfully executes the laws Congress enacts.

⁵³⁰ H.R. REP. NO. 114-385 (2015).

⁵³¹ See Overtime Pay for Secret Service Agents Act of 2016, H.R. 6302, Pub. L. No. 114-311, 130 Stat. 1531.