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# INVESTIGATIVE RULES AND PRACTICES

## I. Overview

For 20 of the last 25 years, Republicans controlled the U.S. House of Representatives and led oversight and investigations. These are some of the rules and practices they followed, but now oppose:

- **Use of Depositions to Gather Evidence:** In the majority, House Republicans used depositions to gather evidence. One Republican-led committee, for example, deposed over 140 Clinton Administration officials. Now in the minority, House Republicans object to the use of depositions to gather evidence.
- **Maintenance of the Confidentiality of Depositions:** In the majority, House Republicans insisted on the confidentiality of depositions to preserve the integrity of investigations, directing that depositions could not be released without consent of the Republican chair or a committee vote. Rep. Trey Gowdy, the chair of the Benghazi Committee, repeatedly resisted calls to release deposition and interview transcripts because “[r]eleasing transcripts can impact the recollections of other witnesses, jeopardize the efficacy of the investigation, alert witnesses to lines of inquiry best not made public, and publicize personal information.” Now in the minority, House Republicans object to maintaining confidentiality during the investigative phase of the impeachment inquiry.
- **Exclusion of Agency Counsel with Conflicts of Interest:** In the majority, the deposition rules adopted by House Republicans prohibited executive branch counsels for agencies under congressional scrutiny from attending depositions. Now in the minority, House Republicans object to their own practice, calling it “completely devoid of any merit or legitimacy.”
- **Testimony and Documents from Political Appointees:** In the majority, House Republicans demanded and obtained testimony and other evidence from political appointees in the executive branch including top White House officials such as White House chiefs of staff, White House deputy chiefs of staff, and White House counsels. Now in the minority, House Republicans support White House efforts to defy congressional subpoenas for testimony and documents from political appointees in the White House and executive branch agencies.
- **Testimony and Documents from Career Employees:** In the majority, House Republicans regularly demanded and obtained testimony from career civil servants. In the Benghazi inquiry alone, House Republicans took testimony from over 60 career employees. Now in the minority, House Republicans support Trump Administration efforts to order career officials not to testify before Congress in violation of multiple federal statutes.

## II. Use of Depositions to Gather Evidence

### *Procedures during Republican Control:*

House Republicans gave deposition authority to committees for specific investigations in the 1990s (e.g., [deposition rules](#) for the House Committee on Government Reform and Oversight inquiry into the Clinton Administration; [deposition rules](#) for the House Committee on Education and the Workforce inquiry into the administration of labor laws). In 2011, House Republicans gave the Committee on Oversight and Government Reform standing deposition authority in the [House rules](#). In 2014, House Republicans gave [deposition authority](#) to the Select Committee on the Events Surrounding the 2012 Terrorist Attack in Benghazi, and in the House rules approved in 2015 House Republicans gave [standing deposition authority to four committees](#) in addition to the Committee on Oversight and Government Reform.

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In 2016, several House Republicans, including then-Rep. Mike Pompeo and current House Committee on Oversight and Reform Ranking Member Jim Jordan, recommended extending deposition authority to all House committees, [asserting](#):

“The ability to interview witnesses in private allows committees to gather information confidentially and in more depth than is possible under the five-minute rule governing committee hearings. This ability is often critical to conducting an effective and thorough investigation.”

In 2017, Republican leaders followed this advice. The [2017 House rules](#) provided all standing committees (other than the Rules Committee and the House Administration Committee) and the House Permanent Select Committee on Intelligence with deposition authority.

Republican chairs made extensive use of deposition authority. In the 1990s, the Committee on Government Reform and Oversight under Republican chairmanship took [141 depositions of individuals who worked in the Clinton Administration](#), including White House chiefs of staff, White House counsels, and other officials at the most senior levels of government. The Benghazi Committee also used the deposition authority as part of its investigation into Secretary Clinton, taking the deposition of Hillary Clinton advisor [Sidney Blumenthal](#). The House Committee on Oversight and Government Reform under Chairman Darrell Issa took depositions during its inquiries into [the attack in Benghazi](#) and [alleged targeting of political groups by the Internal Revenue Service](#).

#### *Current Procedures:*

The [House rules](#) for the current Congress continue the Republican approach and grant standing committees deposition authority. This is the authority currently being used in the impeachment inquiry.

#### *Republican Comments on Current Procedures:*

Republicans are questioning the deposition process, with Rep. Jordan [asserting](#), “The American people understand fairness and they instinctively know that what is happening here is not fair,” and House Minority Leader Kevin McCarthy [claiming](#) that Democrats have “designed a process to pick and choose who to come” and [arguing](#) that the impeachment inquiry “should happen in the light of day.”

## III. Maintenance of the Confidentiality of Depositions

#### *Procedures during Republican Control:*

The deposition rules adopted by House Republicans have regularly restricted attendance at depositions to committee members and committee staff. In 2015, Oversight Committee Chairman Darrell Issa was escorted out of a deposition of the Benghazi Committee that he attempted to attend. Benghazi Chairman Trey Gowdy [explained](#): “I’m a prosecutor, we always follow the rules. [Issa] is not a committee member and non-committee members are not allowed in the room during the deposition. Those are the rules and we have to follow them, no exceptions made.”

The same rules have also restricted the release of deposition transcripts until approved by the committee chair or the committee. When House Republicans gave the Committee on Government Reform and Oversight deposition authority in 1997 for its investigation of the Clinton Administration, the [resolution giving the Committee deposition authority](#) provided that depositions would be “considered as taken in executive session,” which meant that deposition evidence obtained was subject to the [House rules](#) requiring committee authorization for any public release.

When House Republicans gave the Benghazi Committee deposition authority in 2014, the [deposition procedures](#) they approved provided that transcripts could be released only with approval of the committee chair or a committee vote. The [deposition](#)

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[regulations](#) established by House Republicans in 2017 adopted the same restrictions on release of deposition transcripts by other committees.

House Republican chairs have regularly used their authority to withhold the release of deposition transcripts for extended periods of time. In 1997, the House Government Reform and Oversight Committee [kept depositions confidential](#) for months during its inquiry into the Clinton Administration. In 2015, over a year into the investigation by the Benghazi Committee, Chairman Gowdy [stated](#), “[T]he Committee does not plan to release the transcript of any witnesses. ... Releasing transcripts can impact the recollections of other witnesses, jeopardize the efficacy of the investigation, alert witnesses to lines of inquiry best not made public, and publicize personal information.”

In maintaining the confidentiality of depositions, the Republican rules were following long-established precedent. The [House procedures for handling the impeachment inquiry into President Nixon](#) expressly provided that “no member shall make any ... testimony or ... papers or things public unless authorized by a majority vote of the committee.”

#### ***Current Procedures:***

The [deposition regulations](#) issued in 2019 by the Democratic Rules Committee chair adopt the same approach to confidentiality as the Republican [deposition regulations](#).

#### ***Republican Comments on Current Procedures:***

Republicans now object to confidentiality in depositions, with House Republican Whip Steve Scalise [referring](#) to the practice as “a Soviet-style process” that “should not be allowed in the United States of America” and [calling](#) for every Member of Congress and the press to be allowed into the depositions.

## IV. Exclusion of Agency Counsel with Conflicts of Interest

#### ***Procedures during Republican Control:***

The deposition rules adopted by House Republicans have regularly provided that counsel for government agencies may not attend depositions. During the Government Reform and Oversight investigation of the Clinton Administration in 1997 and 1998, the [Committee rules](#) expressly provided that “counsel ... for agencies under investigation may not attend.” The [Republican rule for the Benghazi investigation](#), in which then-Rep. Pompeo participated, likewise expressly provided that “counsel ... for agencies under investigation may not attend.”

Republicans chairs of the House Oversight and Government Reform Committee repeatedly implemented rules that barred agency counsel attendance (rules of the Committee on Oversight and Government Reform for the [112th](#), [113th](#), [114th](#), and [115th](#) Congresses). When the House Republicans extended standing deposition authority to additional committees in 2015 and 2017, the deposition rules issued by the House Rules Committee chair also incorporated this bar (deposition regulations for the [114th](#) and [115th](#) Congresses).

#### ***Current Procedures:***

The agency counsel provisions in the [deposition regulations](#) issued by the Democratic Rules Committee chair in 2019 are identical to those in the [deposition regulations](#) previously issued by the Republican Rules Committee chair.

#### ***Republican Comments on Current Procedures:***

The Trump White House Counsel has [called](#) the bar on government attorneys in depositions “unconstitutional,” while Secretary of State Pompeo has [said](#) these

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procedures constitute “abusive prosecutions” and [called](#) them “not fair.” House Minority Leader Kevin McCarthy [wrote](#) that failure to allow White House Counsel to attend depositions “would create a process completely devoid of any merit or legitimacy.”

## V. Testimony and Documents from Political Appointees

### *Procedures during Republican Control:*

Congress has regularly demanded and obtained testimony from [numerous executive branch appointees](#). To cite one example, Republican chairs took [depositions of the most senior officials in the Clinton White House](#), including two White House chiefs of staff, a deputy chief of staff, two White House counsels, a chief of staff to the Vice President, and a chief of staff to the First Lady.

Republican chairs have also regularly demanded and obtained [documents from the White House](#) and agency heads. House Republicans received [over 2 million pages of documents](#) in their investigations into the Clinton Administration, [including](#) internal White House emails, confidential communications from the White House Counsel’s Office, Justice Department and FBI investigative and prosecutorial materials, and internal agency deliberations. The House Committee on Energy and Commerce under Republican Chairman Fred Upton in 2011 [requested and received](#) documents regarding the Obama Administration’s evaluation of a loan guarantee to solar energy company Solyndra that included emails between White House Office of Management and Budget Director Jack Lew and OMB Deputy Director Jeff Zients and between White House Director of Communications Dan Pfeiffer, Senior Advisor to the President David Plouffe, and Deputy Senior Advisor to the President Stephanie Cutter. The House Benghazi Committee under Republican Chairman Trey Gowdy [requested and received](#) documents that included emails of political appointees such as Secretary of State Hillary Clinton, State Department Chief of Staff and Counselor Cheryl Mills, U.S. Ambassador to the United Nations Susan Rice, and State Department Deputy Chief of Staff Jacob Sullivan.

### *Current Procedures:*

Consistent with Republican practices, House committee chairs are seeking testimony and documents from executive branch political appointees, including [Secretary of State Mike Pompeo](#), [Secretary of Energy Rick Perry](#), [Secretary of Defense Mark Esper](#), and [Acting White House Chief of Staff Mick Mulvaney](#).

### *Republican Comments on Current Procedures:*

The White House has [directed federal officials not to cooperate with the impeachment inquiry](#). Political appointees who have refused to provide testimony or documents include [Secretary of State Pompeo](#), [Secretary of Energy Rick Perry](#), [Secretary of Defense Mark Esper](#), and [Acting Chief of Staff Mick Mulvaney](#). House Republicans are supporting the White House efforts to obstruct the investigation.

## VI. Testimony and Documents from Career Employees

### *Procedures during Republican Control:*

Congress has [routinely demanded and obtained testimony from career civil servants](#). In the Benghazi inquiry alone, the Committee [conducted interviews with over 60 career officials](#) in the Department of State, Central Intelligence Agency, and Department of Defense.

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[At least seven federal statutes](#) protect the disclosure of information by civil servants to Congress. Federal officials who seek to prevent career employees from communicating with Congress face [significant potential administrative, civil, and criminal penalties](#).

### ***Current Procedures:***

**Consistent with Republican practices, Democratic committee chairs are seeking testimony from career civil servants.**

### ***Republican Comments on Current Procedures:***

The Trump Administration has asserted that demanding the cooperation of career civil servants [constitutes](#) “strong-arm tactics” that lack “any regard for due process and the rights of individuals and of the Executive Branch,” and [is instructing individuals](#) called to testify before Congress that there is an “Administration-wide direction that Executive Branch personnel ‘cannot participate in the impeachment inquiry under these circumstances.’” House Republicans are supporting these White House efforts to obstruct the impeachment inquiry.

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