



Hearings to focus on Jan. 6, but also what Congress can do about it

The House select committee investigating the Jan. 6, 2021, attack was tasked to do more than inform

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June 9, 2022

The Jan. 6 hearings that start Thursday night give the House committee a chance to not only reveal what it uncovered in months of investigation but also build support for laws Congress could pass to prevent another such attack on the election process.

While much of the focus for the House select committee to investigate last year's Capitol attack has remained on the documents and witnesses, and potential criminal charges for former President Donald Trump and others involved, the House also charged the committee with suggesting potential legislation.

Over the course of the month, the committee intends to present findings that Trump helped spur efforts to overturn his loss in the 2020 election and contributed to the attack on the Capitol that briefly disrupted the peaceful transfer of power to President Joe Biden.

But the committee has an opportunity to do more than inform. The two Republican members of the panel, Vice Chair Liz Cheney of Wyoming and Rep. Adam Kinzinger of Illinois, will provide a “litmus test” for members of their party and the public, said Dan Weiner, director of the elections and government program at the Brennan Center for Justice at New York University School of Law.

Present the facts of the attack seriously, and defend the committee from attacks of partisanship, and the committee could increase the chances some legislation passes, Weiner said.

“Are the American people going to see that this is a bipartisan, serious process?” Weiner said. “I think if they see Congresswoman Cheney playing a really prominent role — the daughter of a former Republican vice president, herself a very prominent Republican politician — that is going to say a lot.”

With a 50-50 Senate, support from Republicans will be key to addressing the attack. A year ago, Senate Republicans blocked bipartisan legislation to establish an independent commission to investigate the Jan. 6 attack, but six of them broke with their party and voted for it. Democrats need votes from 10 members of the GOP caucus to overcome a filibuster on any legislation.

At a Washington Post event Tuesday, Rep. Jamie Raskin, D-Md., a member of the Jan. 6 committee, said this month's hearings will be key to determining what, if anything, gets through Congress.

"What's considered possible at one moment is very different from what's considered possible at another moment," Raskin said. "So I want to tell the complete story. And then I think we need to have a far-ranging, inclusive public dialogue about what needs to be done."

Experts said the committee's performance could also impact whether any legislation focuses on just the actions of Jan. 6 or Trump's broader campaign to overturn his loss in the 2020 election.

Congressional consideration

Raskin and outside experts point mainly to potential changes in the Electoral Count Act, the 1887 law that governs the certification of presidential election results. Thursday's prime-time hearing, the first this month, has two witnesses who will focus on the facts of the attack that disrupted the process under that 135-year-old statute.

But Cheney included other examples in a floor statement — with which committee Chairman Bennie Thompson, D-Miss., associated himself — that would focus more on Trump, which House attorneys highlighted in a legal fight with the former president over the committee's request for White House documents.

That includes a potential provision to enhance the legal consequences for a president who reportedly knew an attack was occurring yet took no action to stop it, the lawyers told the court.

Lawmakers could also make recommendations for how to prevent future presidents from pressuring the Justice Department to support false claims about an election, or review laws about a president who takes steps to convince state election officials to "find votes" for a campaign, the House lawyers wrote. The reference to finding votes stems from Trump, in a recorded conversation, imploring Georgia state officials to find the votes that would overturn Biden's victory there.

"There is no one more important to study to develop legislation that will prevent the repetition of such acts," the House lawyers wrote in a court filing.

Last year, the Senate Judiciary Committee released a report on the broader effort to overturn the 2020 election results, including Trump's efforts to enlist Justice Department officials. The report noted that then-DOJ official Jeffrey Clark and then-White House Chief of Staff Mark Meadows both violated policy for conducting unauthorized meetings about the election.

The report recommended that Congress step in and pass a law setting relations between the Justice Department and White House in stone and allowing for a back channel for Justice Department officials to communicate any concerns they have with Congress.

However, the House Jan. 6 committee could shatter the fragile chances for congressional action by pushing for too much in response to the attack, according to Thomas Berry, a research fellow at the Cato Institute.

“This really is a unique and rare moment where there does seem to be recognition on both sides of the aisle that the Electoral Count Act is antiquated and needs to be reformed in several ways,” Berry said.

Electoral vote counting

In the lead-up to Jan. 6, Trump allies argued for then-Vice President Mike Pence to use provisions of the Electoral Count Act to reject electors from Pennsylvania, Arizona and other states Biden won.

That, Raskin argued, would have sent the election to the House, where each state delegation casts a single ballot for president. Republicans controlled a majority of the delegations and could have elected Trump president for another term.

“We need to solidify the right of the people to vote against voter suppression, and we need to make certain that the creaky processes of the Electoral College are not exploited to try to nullify the popular vote,” Raskin said.

Bipartisan working groups and former officials, including former Trump White House Counsel Don McGahn, already have urged Congress to update the 135-year-old statute.

The House Administration Committee has started a review of the law and a bipartisan Senate group has been negotiating potential fixes. In January, that committee issued a report noting several potential weaknesses in the law, including vagueness on Congress’ role in certifying the results and the vice president’s role in presenting them to Congress.

In January, Senate Minority Leader Mitch McConnell expressed support for “discussing” changes to the law, telling reporters that “it obviously has some flaws.”

Paul Smith, senior vice president of the Campaign Legal Center, said the effort to challenge the 2020 election results started in the hours after the polls closed, with demonstrations outside counting facilities and court efforts to stop vote counting.

Smith said successful committee hearings could build bipartisan support for an ECA “plus” bill in the Senate, which could include provisions such as mandates for paper backup ballots, further funding for securing ballots and security of election workers, and more.

But Smith noted the “plus was always the rub,” as it butted up against other Democratic proposals to expand access to the ballot box that Republicans argued amounted to attempted federal takeovers of elections.

Raskin himself said he hopes the committee will push for Congress to act beyond tweaks to the Electoral Count Act. For him, Trump’s effort to have Pence reject certain states’ electors were just one inflection point in a broader effort to subvert the electoral process.

“If we just said the vice president doesn't have that authority [to reject states’ electors] that's a very limited response to a very big problem,” Raskin said.

Smith said if the committee is able to present a bipartisan face, it would present an “unpredictable” chance to get through to some Republicans and their voting base. Smith also pointed out the committee does not have to convince all Republicans to get something through Congress.

“You're not going to convince the absolutely committed [Make America Great Again] types, but that doesn't mean you can't put together a pretty strong majority of the country that pushes for making sure this doesn't happen again,” Smith said.