

ORIGINAL ARTICLE

Keeping tabs on the executive

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Abstract

Congress has long exercised its power to oversee the executive branch. Important research has examined empirical patterns in congressional investigations, finding institutional, individual, policy, and partisan incentives motivate legislative inquiry. Yet, scholars largely have overlooked one fundamental question: what is oversight? We use new quantitative and qualitative data to highlight the importance of considering oversight as a series of actions designed to serve both as a symbol and signal in the American separation of powers system. Our exploratory analysis suggests that Congress oversees the executive branch much more frequently and in more ways than previously considered by scholars.

KEYWORDS

oversight, political control, separation of powers

INTRODUCTION

Oversight, as I have been emphasizing, is not a single variable; it varies in incidence, form, and quality. (Rockman, 1984, p. 421)

On July 1, 2019, ProPublica broke a story on a secret Border Patrol Facebook group where agents joked about migrant deaths (Thompson, 2019). The article gave a startling depiction of the group, created in 2016 for roughly 9500 current and former Customs and Border Patrol (CBP) agents. Called “I’m 10-15” (10–15 is a border patrol code for “migrants in custody”), the group shared disturbing, doctored images and posts about migrants and members of Congress. In the ensuing weeks, the story was picked up by every major news outlet, and the House Committee on Oversight and Reform (COR) began an investigation. During the investigation, the committee’s Democratic majority fought with the Republican Trump administration to obtain access to witnesses and unredacted records (Sacchetti & Miroff, 2021). Over 2 years later, the committee released its final findings in a staff report (COR, 2021). The report indicated that not only had CBP been aware of the misconduct for years before the “I’m 10-15” Facebook group became public knowledge, but the agency also consistently had shown patterns of leniency in punishing the offenses.

The congressional investigation into “I’m 10-15” appears to be a clear example of contemporary accounts of congressional oversight of the executive branch—a problem arises, a congressional

committee from one party investigates the presidential administration from the other party, the two branches fight over access to information, and years later the investigation closes when a new president and/or congress assumes office. Yet the “I’m 10-15” investigation is unique in two ways. First, disputes between the committee and the president over access to information are the exception rather than the rule. More often than not, the executive branch voluntarily complies with the information requests that further congressional oversight (e.g., Bopp et al., 2015; Devins, 1996; Tiefer, 1998). Second, and perhaps more consequential for scholarly research, the House committee’s investigation into “I’m 10-15” did not result in a hearing.¹ Instead, committee staff conducted a review of the group’s posts and emails, relied on the Department of Homeland Security Office of Inspector General Reports, and utilized information provided to the committee by congressional support agencies such as the Government Accountability Office.

The richness of information-gathering techniques employed by the committee and its ultimate decision to document the investigation in writing as opposed to through a hearing suggest that oversight of the executive branch encompasses a variety of legislative activities (Aberbach, 1990; Kaiser, 1988). Yet, when assessing oversight, most research evaluates only one form of oversight (usually hearings), and few studies since Aberbach (1990) have analyzed congressional use of multiple techniques. Additionally, oversight scholarship often implicitly assumes an adversarial relationship between the two branches.

Certainly, one of the fundamental principles of American governance is that each branch of government has the constitutional means and motives to check the other branches. Interactions between Congress and the executive occur on a regular basis because of this constitutional design. Some of these interactions are observable and highly salient to the public. Others are more nuanced endeavors that largely occur behind closed doors. Yet each functions within a complex system designed to enable legislative supervision of the executive branch. To understand whether the contemporary legislature serves as an adequate check on wayward presidents (and executive officials), scholars must expand their examination of oversight to include a broader array of congressional activities. Focusing on only one aspect of the oversight process not only creates gaps in descriptive understanding of the concept but also limits theoretical development of how and when legislators use different oversight mechanisms for varying purposes.

Of course, before one begins to evaluate the nature of oversight, one must first define the concept. We begin with a review of varying scholarly treatment of oversight, both in terms of conceptualization and operationalization. We then seek to answer the question “what is oversight,” relying in part on informal discussions with current and former legislative and executive staff, those engaged in the preservation of congressional materials, and representatives from organizations that seek to promote good governance. These discussions highlight the importance of considering oversight as a series of actions designed both to gather information on the executive and to facilitate legislative credit claiming and position taking. Synthesizing these discussions and our own review of the literature, we define oversight as the process of reviewing, monitoring, and supervising the implementation of public policy by the executive branch.

We then build upon the scholarship on information processing in organizations to contemplate the symbolic and signaling functions oversight performs in the American separation of powers system. Oversight is important as a perceived indicator of the quality and quantity of information processed by the legislature. At the same time, because information acquisition is costly, oversight (even if largely unobserved by the public) can operate as a signal of legislators’ underlying willingness to pay for policy change. Our purpose is to provide a fresh perspective on empirical patterns observed by scholars, prompt more nuanced theoretical development, and help further scholarly understanding of how the two branches interact in contemporary governance. Congress has broad authority to inquire into the workings of the executive branch, and many aspects of the process by which legislators do so remain underappreciated and underexplored by scholars.

¹The committee did, however, conduct two hearings involving the Department of Homeland Security during those 2 years. The first related to morale across the department, and the second addressed the department’s family separation policies.

To illustrate this point and to prompt additional scholarly research, we utilize novel data to examine patterns in three different oversight activities across the House Oversight and Reform and Senate Homeland Security and Governmental Affairs committees from 1999 to 2021. Specifically, using previously unavailable communication records provided to us by the Government Accountability Office (GAO), we assess the committees' use of program evaluation performed by external actors. We then employ a new collection of hundreds of oversight documents produced by the two committees to explore committee staff review of executive action. Finally, we compare the committees' use of these nonhearing techniques to their use of the technique most widely considered by scholars—hearings. We find empirical patterns in oversight vary across the three techniques. Considered as a whole, our exploratory examination not only indicates oversight occurs much more frequently and in different ways than previously considered by scholars but also highlights fruitful avenues for future inquiry.

WHAT IS OVERSIGHT?

Identifying and operationalizing legislative oversight of the executive branch is hardly a straightforward task. While the Constitution requires congressional inquiry to relate to considerations of how the executive branch administers existing law and the need for future legislation, this power is wide-ranging and encompasses probes into executive officials' conduct, powers, and duties as well as defects in the nation's social, economic, and political system (*Barenblatt v. United States*, 1959; *Gravel v. United States*, 1972; *McGrain v. Daugherty*, 1927; *Watkins v. United States*, 1957). Indeed, during the House Select Committee on the Modernization of Congress's extensive exploration into strengthening the legislative branch, Chair Rep. Derek Kilmer (D-WA) explained that oversight “is about how Congress comes to understand policy successes and failures. To legislate smarter on behalf of the American people, Congress needs to know whether the policies and programs it authorizes and funds are working as intended” (House Select Committee on the Modernization of Congress, 2021, p. 2). Viewed in this light, one could consider nearly any congressional attempt at gathering information about the state of the world as falling within the definition of oversight (Moore, 2022; Selin & Milazzo, 2021).

Scholarly research reflects this breadth. A brief review of the literature suggests that oversight can involve direct or indirect legislative action; occur in official or unofficial settings; follow the classic police patrol or fire alarm frameworks; be active or reactive, centralized or decentralized, adversarial or supportive; and have a variety of purposes (Balla & Deering, 2013; Kaiser, 1988; McCubbins & Schwartz, 1984; Ogul & Rockman, 1990). Despite the range of scholarly consideration, these conceptions of oversight tend to fall into two categories (Rockman, 1984).

The broadest definition of oversight includes any action by legislators and their staffs—individually or collectively, intended or unintended—that impacts executive behavior (Jahnige, 1968; Ogul, 1976). This definition can be criticized for being overly broad and hard to operationalize. Additionally, the conception can be problematic because it requires not only legislative action but also an executive response to that action. Congressional committees, members of Congress, and their staffs engage in a variety of activities to make executive agencies and officials more accountable to Congress. One should consider these efforts oversight, even if there is no demonstrative change in the behavior of the executive officials and agencies. Impact on executive behavior should be an effect of, rather than a requirement for, oversight.

To narrow the concept and to concentrate on congressional behavior, some define oversight as legislative review of executive actions, programs, and policies (Aberbach, 1990, 2002). This conception of oversight focuses on congressional efforts to determine whether the president or federal agencies are exercising discretion in a manner that is consistent with legislative preferences (Bawn, 1997; Feinstein, 2018). Further narrowing the concept, several scholars focus empirical inquiry on “investigative” oversight, or allegations of wrongdoing, mismanagement, or abuse of power in the executive branch (e.g., Kriner & Schickler, 2016; Lowande & Peck, 2017; Parker & Dull, 2009, 2012). In contrast to the conception of oversight as action by legislators that affects the executive, evaluations of

investigative oversight place the legislature in a reactive role and the executive branch as the first mover (Kaiser, 1988).

Given differential treatment of oversight in the literature, we wondered how those engaged in oversight define the term. Thus, we began our research rather haphazardly by perusing congressional committee websites to get a feel for what the legislature considered to be oversight. We then discussed the concept informally with several current and former committee members and White House staff, with archivists and librarians who work within and outside of government to preserve congressional materials, and with representatives from good governance and public policy organizations such as the American Enterprise Institute, Brookings, Demand Progress, Levin Center for Oversight and Democracy, and Project on Government Oversight.

Our discussions were illuminating for several reasons. First, they reflected the amorphous nature of the concept of oversight. For example, conversations with committee staff members suggested even *they* have difficulty with the concept, preferring to operate under the “I know it when I see it” standard of oversight classification.² Second, and perhaps a result of our first observation, most people with whom we spoke automatically sidestepped our probes to define precisely what constitutes oversight. Instead, they provided their thoughts on how the legislature or executive branch could perform its constitutional duties most effectively, supplemented with examples of times when interactions between the branches worked well (most often told with their preferred branch as the hero).

Our conversations revealed a tendency to conflate the concept of oversight, legislative methods of conducting oversight, and motivations for performing oversight. For example, some people would identify a particular congressional committee as being “weak” on oversight because they did not conduct many hearings. Others would point to committees that held a lot of hearings as not really performing oversight because said hearings were not the result of investigations into bad actors. When reviewing the actions of individual members of Congress, some would discount a legislator who regularly engaged with the executive branch as failing to perform oversight because she was motivated by partisanship. Others would suggest a newer member of Congress with a relatively young staff could not possibly perform oversight because oversight required a level of expertise that takes years to acquire.

At times, these discussions could be frustratingly circular. When asked about what constitutes oversight, experts would identify what oversight is *not*. When prompted to articulate why a particular action did not qualify as oversight, experts would point to a historical example of what they considered oversight to be. Prompts to reflect upon what made one example “oversight” and the other as “not oversight” resulted in descriptions of political and secular time, motivation, affect and effect, and differences in ideological and institutional perspectives. This variation in perceptions of oversight is not a new phenomenon. For example, in 1980, the Assistant Comptroller General for Program Evaluation explained that oversight “means different things to different people. Not only are meanings different, but the objectives underlying various concepts are fundamentally different” (Havens, 1980, p. 2).

However, our conversations provided us with important insight into oversight as a concept. They confirmed our intuition that oversight encompasses a variety of activities, performed at different times with different intentions. Congressional committees, members of Congress, and their staffs engage in these activities to accomplish varying purposes, most of which can be viewed as part of a strategic process of keeping tabs on the executive.

DEFINING AND OPERATIONALIZING OVERSIGHT

Our preliminary research led us to conceptualize oversight using the Congressional Research Service's (CRS) definition as the process of reviewing, monitoring, and supervising implementation of public policy by the executive branch, broadly construed (Congressional Research Service, 2020). Importantly,

²Not unlike Justice Potter Stewart's approach to obscenity in *Jacobellis v. Ohio* (378 U.S. 184, 197 (1964)).

this definition allows for a variety of motivations in the conduct of oversight. For example, legislators may inquire about the effectiveness of existing policy or the efficiency of agency implementation (West, 1998). In contrast to conceptions that solely contemplate high-profile actions regularly covered by the news media, our definition enables consideration of more mundane congressional activity and reflects the views of legislators. Members of Congress like Rep. Jim Jordan (R-OH), current Ranking Member of the House Oversight Committee, view oversight as more than actions focused on “whoever may be in the White House” and often examine “what actually took place in the agencies” (Council on Foreign Relations, 2019).

Unlike many scholarly conceptions of oversight, our definition includes legislative efforts to gather information on problems not currently addressed by statutory law. Often, such oversight activities include investigation of private industry activity to understand important public policy problems. For example, congressional inquiries into the artificial intelligence revolution have centered on cybersecurity and defense risks and called for federal regulation (e.g., Subcommittee on Cybersecurity Information Technology and Government Innovation House Committee on Oversight and Accountability, 2023). While these hearings may not directly engage with the executive branch, they tend to reveal problems in executive policy implementation—if only the fact that the executive branch is *unable* to act or regulate because there is no statutory authority to do so.

Finally, our definition contemplates the utilization of multiple oversight techniques. Indeed, CRS identifies “common” oversight techniques to include performance audits, congressional monitoring of the Federal Register and Unified Agenda, studies by committee staff, statutorily mandated reports, appropriations limitations and riders, communications with the media, and casework (Congressional Research Service, 2020). It may be that congressional use of these forms of oversight is more frequent and influential than traditionally considered techniques such as hearings. Congressional committees’ descriptions of oversight recognize that most oversight takes place through negotiation and discussion over the exchange of information, rather than through hearings (e.g., Senate Committee on the Judiciary, 2018).

Despite the richness of oversight techniques highlighted by the legislature’s own support agency, congressional committees, and legislators, scholars tend to focus on hearings as a proxy for oversight (e.g., Balla & Deering, 2013; Duffin, 2003; Epstein & O’Halloran, 2001; Kriner & Schickler, 2016; MacDonald & McGrath, 2016; Marvel & McGrath, 2016; Ogul, 1976; Parker & Dull, 2009, 2012; Walgrave et al., 2017). This proxy measure is appealing because it captures concrete, observable action by members of Congress and provides insight into variation in congressional committee activity. However, by many accounts, hearings are the most performative, high-stakes form of oversight (Beermann, 2006; Feinstein, 2018; Geddes, 2020; Havens, 1980; Kaiser, 1988). Hearings are the byproduct of a monthslong (if not years), multistage process that provides multiple opportunities for strategic behavior by participating actors (Diermeier & Feddersen, 2000; Lowande, 2018). As a result, it is likely that empirical patterns found in data on the observable end of that process (e.g., the hearing itself) may not reflect empirical patterns in other, less visible, but potentially more frequent, forms of oversight.

This presents scholars with a potential conundrum—publicly available, easily quantifiable oversight activities such as hearings enable scholars to construct empirical models but may misrepresent the true population (Ogul & Rockman, 1990). Our conversations with current and former government officials highlighted this problem. As one current staffer explained, “Everyone wants us to do a hearing. They don’t understand how much work goes into that...tell us something to look into and we’ll do it. But don’t expect a hearing.” More bluntly, a former staffer who worked both on the Hill and in the White House put it this way: “hearings aren’t really about oversight, they’re about politics.”

What other forms of oversight exist beyond hearings? Nonhearing oversight techniques tend to fall into three broad categories. First, and generally downplayed in political science studies of oversight, is program evaluation conducted by noncommittee personnel (Aberbach, 1990). For example, legislators and staff make significant use of expertise from congressional support agencies like the Government Accountability Office and the Congressional Research Service for policy analysis and information about executive function (Feinstein, 2018; Mills & Selin, 2017; Reynolds & Gode, 2020; Tiefer, 1998). Second, members of Congress can rely on staff to review executive programs and policies. Some evidence

suggests that this form of oversight occurs more frequently than program evaluation or hearings because it gives committees maximum control over content and allows legislators and their staffs to communicate clear signals to the rest of the chamber and to external actors (Aberbach, 1990; Katzmann, 1989).³ Finally, legislators can conduct oversight through ad hoc intervention (Dodd & Schott, 1979; Fiorina, 1989; Ogul, 1976). Often through letters to federal agencies, legislators use this piecemeal oversight technique most frequently to address specific, pressing problems to which they want a rapid response but may have a limited audience (Aberbach, 1990; Lowande, 2018). Of the three categories of nonhearing techniques, this last mechanism has received the most scholarly attention in recent years (e.g., Lowande & Potter, 2021; Lowande et al., 2019; Mills et al., 2016; Reynolds & Gode, 2020; Ritchie 2017; Ritchie & You, 2019).

Returning to our definition of oversight, not only does our conceptualization allow for the consideration of all these techniques, but it also recognizes that congressional committees, members of Congress, and their staffs may use these techniques at different times for different purposes. For example, legislators may rely on a nonhearing technique like program evaluation to discern the policy consequences of various executive actions, gather political information through committee staff review, and then conduct a public hearing to take a policy position. All these activities are part of the *process* of reviewing, monitoring, and supervising implementation of public policy by the executive branch. Scholars who operationalize oversight through the examination of one stage of the process likely will find different empirical patterns than scholars who operationalize oversight with a proxy measure from a later stage in the process.

While hardly a groundbreaking sentiment, we stress an assessment of oversight is conditioned by definition and operationalization (Ogul, 1976; Rosenthal, 1981; Rockman, 1984). Across the modern era, scholars have drawn attention to and debated levels of congressional oversight of the executive branch. Those who explore empirical patterns in observable oversight have found institutional, individual, policy, and partisan incentives motivate legislative inquiry (or lack thereof) (e.g., Aberbach, 1990, 2002; Feinstein, 2011, 2018; Johnson et al., 1992; Kriner & Schwartz, 2008; Kriner & Schickler, 2016, 2018; Lowande & Peck, 2017; McGrath, 2013; MacDonald & McGrath, 2016; Mayhew, 1991; Parker & Dull, 2009). Some have posited that legislators only intervene in executive matters that have tangible importance to their constituents, others suggest that high transaction costs serve as disincentives to dedicate time to oversight, and still others argue a smoothly working system of control implies that legislators should spend their time on other activities as the executive branch provides benefits to established congressional constituencies (e.g., Dodd & Schott, 1979; Fiorina, 1989; Gailmard, 2009; McCubbins & Schwartz, 1984; McCubbins et al., 1987, 1989; Miller, 2005; Miller & Hammond, 1990; Weingast, 1984; Weingast & Moran, 1983).

However, most of this research evaluates only one aspect of oversight at a time (Ringquist et al., 2003). Few studies since Aberbach (1990) have analyzed congressional use of multiple techniques or have considered the possibility that the presence of one form of oversight may be contingent upon conduct of another. To illustrate this point, we conduct an exploratory analysis of three different indicators of the oversight activity of two congressional committees from 1999 to 2021. In doing so, we build upon existing theories of legislative information processing to provide a framework for future consideration of how and when Congress oversees the executive branch.

OVERSIGHT WITHIN THE AMERICAN SEPARATION OF POWERS SYSTEM

Regardless of definition or operationalization, a consistent theme in scholarship is that oversight is an attempt to make executive agencies and officials more accountable to Congress (Dodd & Schott, 1979; Selin, 2022). Scholars regularly equate oversight with congressional efforts to control executive action

³But see Lowande and Peck (2017).

and to serve the legislature's political interests by detecting and resolving executive divergence from legislative preferences (Aberbach, 1990; Clinton et al., 2014; Lowande, 2018; McCubbins & Schwartz, 1984). In this sense, scholarly conceptions of oversight are consistent with its constitutional purpose, broadly construed—to supervise how the executive branch spends public funds.

Constitutionally, the concept of oversight evolved from the legislature's need for information on the executive branch (Taylor, 1955; *Tenney v. Brandhove*, 1951). Recognizing that the congressional power of appropriation contains an inherent authority to supervise how those funds are spent, the US Supreme Court repeatedly has acknowledged that Congress may investigate to represent constituents widely and effectively (*Barenblatt v. United States*, 1959; *Eastland v. U.S. Servicemen's Fund*, 1975; Landis, 1926; *McGrain v. Daugherty*, 1927). As such, the first documented oversight investigations in each chamber of Congress involved an inquiry into the use of public funds by an executive official.⁴ Congressional investigations then expanded to include the presidency itself, reinforcing key principles of checks and balances in our separation of powers system.⁵

Scholarly and judicial contemplation of oversight is consistent with the views of members of Congress. For example, former Chair of the House Oversight Committee Rep. Darrell Issa (R-CA) explained that “oversight should make the federal bureaucracy transparent, accountable and a model of efficiency and effectiveness” (Issa, 2010). Those sentiments have been echoed by former Speaker of the House Nancy Pelosi (D-CA) and former Senate President Pro Tempore Chuck Grassley (R-IA) (Lambert, 2017; Snell & Walsh, 2018).

However, little evidence suggests that congressional review of executive outputs results in increased responsiveness to legislative preferences or even prompts change in the private sector (Koop & Hanretty, 2018; Paulson, 2004; Prakash, 2012; Selin, 2022). In fact, in some circumstances, such review can induce strategic behavior by executive officials to propose more extreme policies than they would otherwise or to provide ambiguous, biased, or inaccurate information (Boräng et al., 2018; Dekker & Hansén 2004; Patty & Turner, 2021). Furthermore, even if executive actors are responsive to legislative oversight, modification of the policy process does not happen overnight (e.g., Lindblom, 1968; Rieselbach, 1986). Years may pass before policy change, making it difficult for even the most astute observer to pinpoint exactly what prompted that change. As Rep. Henry Waxman (D-CA), former Chair of the House Oversight and Government Reform Committee, explained in his book on oversight, “one reason people don't appreciate government as fully as they might is that many of the positive changes take years to fully materialize” (Waxman, 2009).

Given the electoral pressures members of Congress face, a natural question is what is the net benefit of conducting oversight of the executive branch? While we cannot hope to conclusively answer this question, we build upon the scholarship on information processing in organizations and posit that oversight is a multistage process that operates as both a symbol and a signal in American politics. At times this process serves to gather information on the executive, and at times it serves to facilitate legislative credit claiming and position taking. Reflecting this variation, legislative committees use a variety of techniques at different times in the oversight process to accomplish different goals.

To illustrate our point, we examine the oversight activities of the committee in each chamber that has the broadest oversight jurisdiction and most significant investigation responsibilities—the House Oversight and Reform (COR) and Senate Homeland Security and Governmental Affairs (HSGAC) committees—from the 106th to 116th Congresses. Not only is oversight the foundation of these committees' responsibilities, but also they are not bound by the departmental or programmatic jurisdictional constraints faced by other congressional committees (Dodd & Schott, 1979). As a result, COR and HSGAC are by far the most active committees in terms of oversight (Parker & Dull, 2012).

⁴In 1792, the House of Representatives authorized a committee to investigate General Arthur St. Clair's defeat in the Battle of the Wabash. The Senate conducted its first official investigation in 1818, addressing General Andrew Jackson's conduct in the Seminole War.

⁵For example, 14 sitting or former presidents have been subpoenaed or voluntarily produced evidence to the other branches of government over the course of two centuries: Thomas Jefferson, James Monroe, John Quincy Adams, John Tyler, Abraham Lincoln, Ulysses Grant, Theodore Roosevelt, Richard Nixon, Jimmy Carter, Gerald Ford, Ronald Reagan, William Clinton, Barack Obama, and Donald Trump (Rosenberg, 2017).

Oversight as a symbol and signal

At its most basic, oversight provides political actors and the public at large with assurance that legislators take seriously their constitutional duties; oversight is a symbol that the American separation of powers system of government is functioning as designed. In this regard, highly visible aspects of oversight like hearings or widely publicized reports are important as perceived indicators of the quality and quantity of information processed by the legislature (Chafetz, 2020; Feldman & March, 1981). Our discussions with staffers confirmed this notion, suggesting a need to conduct oversight both as a demonstration of productivity and an opportunity to shape the political agenda.

Empirical patterns found in the literature that evaluates investigative oversight are consistent with these sentiments. When the public becomes aware of a particular crisis or scandal in the executive branch, members of Congress face increased pressure from their constituents, and legislators can maximize their political gains by taking symbolic, observable action (Evans, 1994). As a result, scholars tend to observe congressional committees holding more hearings driven by implementation problems as well as short-term increases in legislative information processing when issue salience or media attention increases (Fagan & McGee, 2022; Lewallen et al., 2016). Oversight of this nature is almost always negative in tone and tends to concentrate on finding out who is to blame for a specific event (Havens, 1980). To quote Fiorina (1989), legislators earn electoral credits when

aggrieved and/or hopeful constituents petition their congressman to intervene in the complex (or at least obscure) decision processes of the bureaucracy. The cycle closes when the congressman lends a sympathetic ear, piously denounces the evils of the bureaucracy, intervenes in the latter's decisions, and rides a grateful electorate to ever more impressive electoral showings. (pp. 46–47)

Indeed, recent research demonstrates that constituents reward all legislators—regardless of partisan affiliation—for engaging in visible oversight efforts (Miller & Ruder, 2020).

For example, in 2020, the Subcommittee on Civil Rights and Civil Liberties of the House COR completed an investigation of the Federal Energy Regulatory Commission's (FERC) treatment of applications to build natural gas projects, finding that FERC granted approval of those applications over 99.9% of the time (Subcommittee on Civil Rights and Civil Liberties, House Committee on Oversight and Reform, 2020). During the investigation, the subcommittee's chairperson, Rep. Jamie Raskin (D-MD), issued several press releases on both the subcommittee's page and his own website, released a video on YouTube, and presided over a hearing entitled “Pipelines Over People: How FERC Tramples Landowner Rights in Natural Gas Projects.” Constituent comments on the YouTube video illustrate the symbolic nature of the subcommittee's oversight. One commentor wrote, “Thank you, Chairman Raskin. Very well done. This must stop and there must be restitution. But this video must be salve to so many who have already lost so much, just to feel heard at last. Thank you.”⁶

In addition to being a symbol of a functioning separation of powers system, oversight also can be a signal sent to other government officials and to the public. Because information acquisition is costly, the most common way that legislators reveal their underlying willingness to pay for policy change is by challenging or defending executive action through oversight (Bussing & Pomirchy, 2022; Ethridge, 1984; Feldman & March, 1981; Hall & Miler, 2008). In addition to taking highly observable oversight actions like holding hearings, members of Congress can send such signals through nonhearing techniques like requesting the GAO to conduct program evaluation or having committee staff review an agency program. In an era of limited legislative resources (e.g., LaPira et al., 2020), the decision to invest in any oversight technique is a consequential choice about the allocation of time (Ogul, 1976; Rosenthal, 1981). Bluntly explained by Rep. Henry Waxman (D-CA), legislators recognize

⁶<https://www.youtube.com/watch?v=gY4E2JarH0U>

that oversight “has to be a part of something other than, ‘Now we’ll hold the 25th hearing on things the president thinks we don’t like about him’” (DeChiaro, 2018).

Through oversight, Congress as an organization is a consumer, manager, and purveyor of information (see Feldman & March, 1981). Congressional committees facilitate this processing not only by incentivizing the development of expertise but also by offsetting the executive branch’s analysis of complex issues and directing resources to constituents (Epstein & O’Halloran, 2001; Gilligan & Krehbiel, 1990, 1997; Krehbiel, 1991). While there is an oversupply of available information on executive policymaking from congressional support agencies, interest groups and other constituents, the media, and committee staff, members of Congress have limited time to sift through such complex information streams (Workman et al., 2009). As a result, in gathering and consuming information, Congress, its committees, and its members do not act neutrally (Ban et al., 2023). Instead, they approach information processing with a particularized definition of the policy problems they encounter (Whiteman, 1985) and tend to use oversight as a form of advocacy for support of preexisting positions (Aberbach, 1990). One staff member explained, “information is used to make a case rather than to help people make up their minds” (Weiss, 1989, p. 425).

THE PROCESS OF OVERSIGHT

Because information processing through oversight can serve as both a strategic symbol and signal, members of Congress have developed a complex set of internal structures to strategically filter, block, and amplify those symbols and signals (Katzmann, 1989; Workman et al., 2009). Thus, scholars should think of oversight as part of this complex system—from the startup process to discovery, presentation of evidence, and follow-through (Johnson et al., 1992). And because oversight is a staged game, empirical examination of one point in the decision tree without recognition of the others can lead to incomplete conclusions about the nature of legislative review of the executive branch (Selin & Milazzo, 2021).

Program evaluation

When conducting oversight of the executive branch, congressional committees generally begin by collecting publicly available information and going through documents provided by one or more congressional support agencies (Chafetz, 2020). Committees seek information on policy problems and goals, as well as information that sheds light on the political consequences of government action (Fenno, 1973; Leyden, 1995; May, 1992). Both types of information are key for committees to make informed decisions about whether to proceed to the next stage of the oversight process. Policy-specific information can provide legislators with insight into the social construction of important issues of the day, and political information can highlight how advocacy coalitions manipulate and maneuver within the policy process to advance their agendas (Esterling, 2007; Hall & Miler, 2008; MacDonald & McGrath, 2016).

We stress that this information-gathering process is a type of oversight, but it usually occurs prior to and informs the decision on when to engage in highly visible forms of oversight such as hearings. These preliminary processes include getting a feeling for executive capacity, establishing contacts with experts both within and outside of the executive branch, and becoming familiar with the nature and content of a program or policy (Jahnige, 1968). The casual observer may not be aware of initial steps taken to acquire information on executive action, but key stakeholders (including executive officials) are. As a result, this stage of oversight serves primarily as a signal to other political actors and may occur in different empirical patterns than other forms of oversight. To understand the extent of preliminary information gathering, we explore one aspect of the process: program evaluation conducted by the Government Accountability Office (GAO).

As a counterweight to the knowledge and expertise of the executive branch, Congress established a series of nonpartisan agencies and offices—including the Congressional Budget Office, the Congressional Research Service, and GAO—to provide informational support to the legislature (Cross & Gluck, 2020). Of particular relevance for oversight is the GAO. In the wake of both the Vietnam War and Watergate, Congress increasingly sought informational independence from the executive branch and leaned on the GAO⁷ to provide information on which the legislature could confidently rely (Marvin & Hedrick, 1974; Rourke, 1978). Today, GAO serves as “congressional watchdog,” regularly conducts oversight of the executive, and is valued within the legislature as giving equal attention to the work of both the majority and minority parties in government (Cross & Gluck, 2020; Dooling, 2020; Norton & Smith, 2008). Indeed, some have even described GAO as the primary entity that conducts congressional investigations (Beermann, 2006).

Under current law, upon the request of either chamber or any committee of Congress, GAO must investigate the use of public money⁸ and/or evaluate any program or activity the executive branch carries out under existing law.⁹ Both of these functions are consistent with constitutional and scholarly conceptions of oversight. After its investigation, GAO must then either provide a report or provide the legislature with copies of the material GAO compiled when evaluating the executive branch's performance. Thus, members of Congress often turn to GAO as a source of information early in the oversight process (Levin & Bean, 2018).

To understand the interaction between GAO and congressional committees, we asked GAO to provide us with a record of documents the agency sent to COR and HSGAC during our period of study. The benefits of such an approach are twofold. First, we do not limit our analysis to a specific type of information (i.e., reports under the Congressional Review Act; information on high-profile executive actions; programs targeted under GAO's High-Risk List), and therefore we can shed light onto the extent and range of oversight communications between Congress and its support agencies. Second, our approach provides us with records of the information made available upon request from our two committees of interest, rather than requiring us to make assumptions about the committees' access to and use of information publicly disclosed through GAO's website.

Consistent with its reputation for transparency, GAO was remarkably helpful in working with us and provided a list of documents separated by committee and identified by number, title, and issuance date. These documents included, *inter alia*, reports, correspondences, statements for the record, and technology assessments.¹⁰ The documents reflected oversight of a wide range of executive actions—from identifying procedural challenges in executive management to substantive analysis of executive policy—and covered an equally wide range of agencies and bureaus, including those in the Executive Office of the President.

In total, GAO provided 6,248 oversight documents to the two committees in the 106th to 116th Congresses. The number varied across chamber and Congress, with a high of 586 documents sent to COR and 423 to HSGAC (both during the 106th Congress) and a low of 153 documents sent to COR (114th Congress) and 188 sent to HSGAC (108th Congress). GAO's communications also vary with respect to the agency's view of the executive branch. Perhaps most illuminating for scholarly consideration of oversight, GAO's analysis is not all negative. At times the communication concludes that the executive branch has “satisfied congressional direction”¹¹ or “has improved”¹² in its implementation of public policy. When considered as a preliminary step in the oversight process, these patterns are not surprising and are consistent with our conversations with staff who serve on oversight

⁷Then named the General Accounting Office.

⁸31 U.S.C. § 712 (2022).

⁹31 U.S.C. § 717 (2022).

¹⁰GAO excluded documents that contained sensitive information. The full criteria used by GAO in identifying the products sent to the committees over the specified time period is available upon request from the authors.

¹¹March 15, 2001.

¹²September 7, 2016.

committees. Congress constantly is surveilling the executive branch for a possible opportunity to demonstrate the legislature's role in the American constitutional system of separated powers.

However, the data do suggest that the committees have relied less on GAO over time. Table 1 provides a summary of the mean number of communications sent per year to each committee's chair. While one could observe these averages and conclude that both chambers are conducting less oversight over time, it may be that committees have less of a need to rely on GAO as information becomes more accessible through other sources. While GAO historically may have been the premier resource for research and investigation on the executive branch, legislators now operate in a comparatively information-rich environment. Scholars, journalists, and other watchdog organizations have increasingly focused on executive implementation, making it easier for legislators to acquire information on the executive branch (see Kriner & Schickler, 2016).

Decreased reliance on GAO may reflect or perpetuate partisan divisions observed later in the oversight process. While legislators can save resources by relying on GAO's expertise to provide "timely, fact-based, non-partisan" information (Government Accountability Office, 2022), that information may not provide the heuristic political cues media and other information sources can offer (e.g., Walgrave et al., 2017). We emphasize the nonhearing technique of initiating oversight through program evaluation is seldom, if ever, a neutral information-gathering endeavor. Legislators and their staff act with a bias as they acquire information, either subconsciously or consciously seeking information that fits with their worldviews (May, 1992). Requests for program evaluation from GAO therefore are a search for a basic assessment of an issue that is in line with the perspective of legislators or their staff (Whiteman, 1985).

Committee staff review

Regardless of how they initially acquire material on the executive, members of Congress do not necessarily move forward in the oversight process with the information they secure (Aberbach, 1990). As former COR Chair Rep. Jason Chaffetz (R-UT) explained, "remember, the federal government is 2-plus million people. We can't investigate everything all the time" (Coppins, 2017). Instead, legislators and their staff assess the information gathered to determine the best way to proceed. If they decide to invest more time and resources into investigation, they use additional processing methods to extend and refine their positions (Whiteman, 1985). Such activities tend to be more visible than simple requests for program evaluation, and they inform whether, how, and when members of Congress and congressional committees intervene in executive branch decisions. These activities often operate as symbols of a healthy separation of powers system and serve as a signal to other political actors. As explained by former Senate President Pro Tempore Chuck Grassley (R-IA), "the goal is to get the information, not put on a show" (Senate Committee on the Judiciary, 2018).

Yet few scholars have assessed empirically the frequency with which this information processing occurs. This likely is due to the difficulty of obtaining documentation. Incredibly, there are no formalized rules regulating the archiving of committee records on oversight. House and Senate rules require the Government Publishing Office (GPO) and the Library of Congress (LoC) to preserve committee reports approved by full committee vote.¹³ However, as committees increasingly have delegated authority to subcommittees and partisan polarization has increased, many committees choose not to follow the prescribed process for producing these "official" reports. Instead, committees record their investigations through a variety of documents issued by the majority and/or minority committee members and staff.

Data collection is further complicated by the fact that documents can become technologically obsolescent within a few years and that congressional committees operate differently with respect to how

¹³House Rule XI-XIII; Senate Rule XXVI.

TABLE 1 Communications between GAO and Committees by Chair.

House chair (Congress)	Mean reports per year	Senate chair (Congress)	Mean reports per year
Dan Burton, R-IN (105–107)	271	Fred Thompson, R-TN (106–107) ^a	240
Thomas Davis, R-VA (108–109)	187	Susan Collins, R-ME (108–109)	113
Henry Waxman, D-CA (110)	133	Joseph Lieberman, D-CT (107, 110–112) ^a	168
Edolphus Towns, D-NY (111)	112	Tom Carper, D-DE (113)	144
Darrell Issa, R-CA (112–113)	90	Ron Johnson, R-WI (113–116)	101
Jason Chaffetz, R-UT (114)	77		
Trey Gowdy, R-SC (115)	90		
Elijah Cummings, D-MD; Carolyn Maloney, D-NY (116)	87		

^aFred Thompson and Joseph Lieberman alternated chair duties in the 107th Congress, as the majority in the Senate changed three times.

they make their materials available digitally. For example, for most of the time it has had a digital presence, COR has maintained separate websites administered by the two political parties, each with their own practices regarding the preservation of oversight records. Compounding the issue, with no legal rules regarding preservation, committees occasionally withdraw documents from the public record for political expediency.

Due to the varying availability of documents (and differential priorities and funding for archival institutions), every government-sponsored archival resource contains a different set of records. To make matters worse, none of these resources reliably catalogues documents as “oversight” or not.¹⁴ This means that while the House, Senate, GPO, LoC, and National Archives and Records Administration maintain similar collections when it comes to the *legislative* history supporting specific bills, these entities vary in terms of archiving *oversight* history supporting specific investigations.

Thus, our initial efforts to explore information processing in the legislature became as much about preserving the content of oversight documents as cataloging them for our own (and future) research (Moore, 2022). We began with the recognition that, as part of their oversight work, all congressional committees document their efforts in written form. Some of these documents are quite informal and short, and they highlight a particular fact or piece of evidence a committee member or staff found while investigating. Other documents detail every step of the committee's progress, consist of thousands of pages, and are voted upon by the full committee before being released. We refer to all of these documents as “oversight reports” and define the term to mean any document (a) produced by a congressional committee, subcommittee, or member of Congress;¹⁵ (b) designated as a report; (c) involving fact finding; and (d) distinct from a House or Senate filing in connection with specific legislation.¹⁶ This definition allows us to capture a wide range of documents utilized by committee members and staff during the investigative process.

¹⁴While some information sources do classify some documents as oversight related, these classifications are not assigned consistently over time, fail to rely on controlled vocabulary, and/or are not accompanied by clear decision rules. For example, in one case, a source allows users to assign any term they want to any document as long as the user becomes a “citizen archivist.”

¹⁵While we present our data on COR and HSGAC in this article, our approach is intended to sweep in a wide variety of congressional committees and subcommittees, including standing, select, joint, temporary, or special committees or subcommittees, and focus attention on reports developed under the leadership of one or more members of Congress. Data collection for other committees is ongoing.

¹⁶This final criterion excludes reports written by a committee to accompany a specific bill to be reported to the full House or Senate for further action and reports created by a conference committee to present legislation for final enactment by both chambers.

Identifying the universe of documents that satisfy our definition is an incredibly extensive undertaking. Our team combed through current and archived committee websites and government preservation sources such as GPO's govinfo.gov and LoC's Congress.gov, as well as good governance collections such as the Homeland Security Digital Library and Lugar Center's Bipartisan and Governance and Oversight records.¹⁷ When working through each source, we utilized a standardized procedure and series of decision rules to help us obtain all documents housed within each source that fell within our definition of “oversight report.”

From the 106th to 116th Congresses, COR and HSGAC produced 744 oversight reports (473 and 271, respectively). The reports varied quite a bit in terms of style and substance. For example, in its 2002 examination of Department of Energy contracts, HSGAC's subcommittee on Federal Spending Oversight and Emergency Management found that the department had planned to purchase \$13,000 treadmills for nuclear materials couriers to use while training to run a mile. Rather than holding a hearing on this issue, the subcommittee documented the fact in a short, one-page report. On the other end of the spectrum, that same year COR issued a 3,592-page report voted on by the full committee after a yearslong investigation (including hearings) of clemency decisions by the Clinton administration. On average, the reports are about 74 pages in length (minimum 1, maximum 3,592).

Recognizing a need to differentiate types of documents produced by the committees, we divided our oversight reports into four categories: committee-approved reports, majority and minority reports, majority reports, and minority reports. Figure 1 depicts the number of oversight reports by type and congress for the two committees. We classify reports as committee approved if the document was brought to the whole committee for a vote and was approved. We classify all other documents by the party that produced the report—majority and minority reports are documents created through the cooperation of both parties, majority reports were produced by the majority party, and minority reports were produced by the minority party of the committee.

Our data suggest formalized, committee-approved reports have not been the modal form of documenting oversight. Despite the overall number of reports increasing over time, the number of committee-approved reports decreased during our period of study. Instead, the committees in both chambers overwhelmingly have favored producing informal documents that can be made available more quickly (often accompanied by a press release).

A surprising number of these informal reports were bipartisan—approximately 39% (287) of the reports were staff reports developed through collaboration between the majority and minority parties. This frequency increased in the later congresses, with over 55% of the documents produced by the committees in the 112th to 116th Congresses being bipartisan. The committees' use of collaborative fact-finding documents runs counter to depictions of oversight as a partisan weapon and suggests oversight conducted through committee staff review can serve as a symbol that the American separation of powers system of government is functioning as designed. For example, under Chair Trey Gowdy (R-SC), COR released a 2017 report on failures of the federal government to address personnel misconduct—including the solicitation of prostitutes, sexual harassment of colleagues, and the accessing of pornography during the workday (COR, 2017). The report was the result of a bipartisan investigation of federal activity from the Reagan through Trump administrations and followed several GAO examinations into the issue.

Reinforcing our suspicion that research that focuses exclusively on hearings may miss a significant amount of oversight activity, we find that only about 42% of the reports in our data (309) were connected to a hearing. This rate varies across chambers, with a smaller percentage of reports attached to a hearing in the House than in the Senate (189/473 in the House; 120/271 in the Senate). Thus, it may be that committees use oversight reports for different purposes than hearings and that this use varies across chambers.

¹⁷Full codebook detailing data collection process and decision rules will be available upon publication.

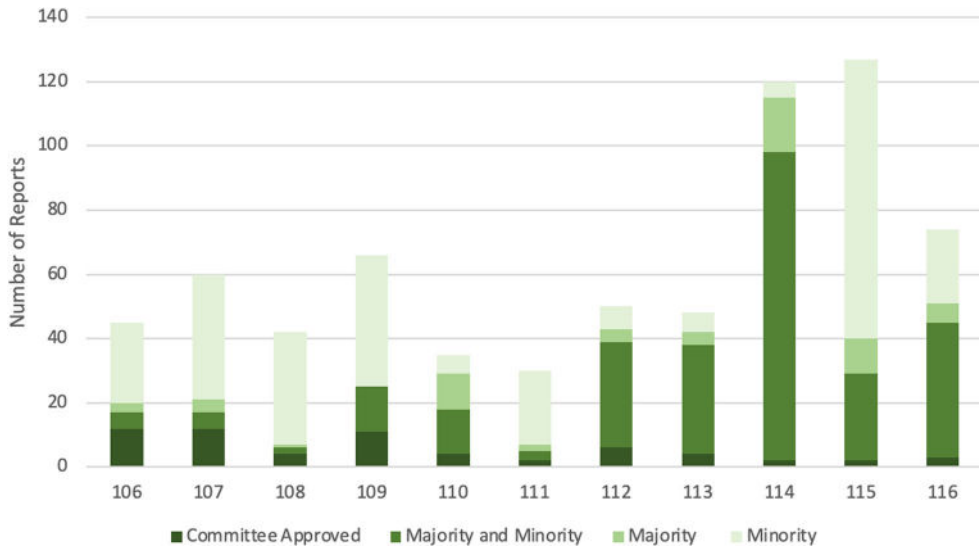


FIGURE 1 Oversight reports by congress and type.

Hearings

We contemplate hearings as an activity that most often occurs toward the end of the oversight process. Congressional hearings require extensive planning, including selecting witnesses and determining the order and format of testimony, securing advance written materials, putting together briefing books for committee members, drafting opening statements, and preparing for the question-and-answer period following oral testimony (Sachs, 2003). This planning often relies on information collected from program evaluation and staff review.

Holding a hearing is a costly, strategic decision to frame the debate on an issue and to document legislative stances to key constituent groups (Beermann, 2006; Bussing & Pomirchy, 2022; Diermeier & Feddersen, 2000; Ogul & Rockman, 1990). Explained by a staff member for a House committee chair, “Hearings are basically for show, but they allow us to flex our muscles, and provide a record of our position” (Talbert et al., 1995, p. 388). Our conversations with current and former committee staff members emphasized this point. One staff director was quick to point out, “80% of hearings are about the narrative.” Viewed from this perspective, it is understandable why stances taken by members of Congress during oversight hearings have become increasingly positional over time (Lewallen et al., 2016). Hearings are not necessarily about information *gathering*, but rather are a form of information *sharing*.¹⁸

We assess this stage of the oversight process through an examination of the congressional hearings collection of the Government Publishing Office's GovInfo.gov. To remain consistent with our definition of oversight, our hearings data are broader than in some studies of interactions between Congress and the executive branch. We follow West (1998) and catalog any hearing held by either COR or HSGAC that does not primarily concern a bill proposal. Importantly, and consistent with our definition of oversight, our operationalization of this form of legislative activity can include an examination of activities in both the public and private sectors that highlight problems in the policy process. Our conversations with committee staff involved in constructing hearing plans illustrated the necessity for such flexibility. A consistent theme in these discussions was the need to identify a “villain” or a “bad guy” in hearings. Particularly during periods of unified government, it can be strategically advantageous for the hearing to

¹⁸This is not to say that hearings fail to reveal information, but merely that information produced during a hearing is cultivated.

highlight a bad actor from the private sector as opposed to the executive branch. For example, in 2003, HSGAC held a hearing on practices in the human tissue bank industry that resulted in the regular use of tainted tissue in transplantation (Senate Committee on Governmental Affairs, 2003). While the industry was the primary target of the committee's investigation, Chair Susan M. Collins (R-ME) used the platform to call for the Food and Drug Administration to strengthen regulatory requirements. Our operationalization allows us to capture this sort of hearing activity.

From the 106th to 116th Congresses, the two committees held a total of 3,061 oversight hearings. Reflecting its larger size, COR held many more hearings than HSGAC (2,140 and 921, respectively). The number of hearings tends to follow a temporal trend, reaching a high in both chambers during the 108th and 109th Congresses (in a time of unified government during the George W. Bush administration) and a low point during the 115th and 116th Congresses (unified and divided government, respectively, during the Donald Trump administration).

Our hearings data suggest that routine oversight hearings not only may be more common than their high-profile counterparts, but they also may be equally as important. A hearing by the Ad Hoc HSGAC Subcommittee on Contracting Oversight in 2011 called "Food Service Management Contracts: Are Contractors Overcharging the Government?" is illustrative. Topics like this do not receive much public attention—a fact of which committee members are all too aware. In her opening statement at the hearing, Senator Claire McCaskill (D-MO) stated baldly,

I am not shocked that this is not a full room...this subject matter is, as you can tell by the room, not the sexiest in Washington. We are not going to have breaking news online about this hearing today. But this is important work.... The irony is, everyone is running around this building giving political statements about how we have to bring down the spending of the Federal Government. Well, here we have a line item in the Federal Government that is worth billions and billions and billions of dollars, and yet it is not going to garner the attention as some other sexy headline that I am sure others are covering as we speak over in the main building. (Ad Hoc Subcommittee on Contracting Oversight Senate Committee on Homeland Security and Governmental Affairs, 2011, p. 1)

If this is the case, then why do legislators use their limited resources to conduct these hearings? It is likely that hearings such as these operate as a signal to other political actors of committees' (or their members') underlying willingness to use their political capital to prompt policy change. Shortly after the hearing on food service management contracts, Congress enacted a consolidated appropriations bill that included several provisions adjusting the contracting authority of the Department of Agriculture (the department responsible for regulating food service management contracts).¹⁹

Assessing oversight

Our examination of nonhearing and hearing techniques suggests that congressional committees may use program evaluation, committee staff review, and hearings for different purposes in the oversight process. As a result, empirical patterns across the three techniques may not be similar. To explore this possibility, we graph trends in GAO communication, oversight reports, and hearings over time. Figure 2 depicts those trends. The patterns in the two committees' use of program evaluation, staff review, and hearings varied across chamber and time and highlight the importance of broadening scholarly consideration of oversight to include empirical assessment of nonhearing techniques. Across all congresses, both COR and HSGAC utilized the combined nonhearing techniques in our study more frequently than hearings.

¹⁹Consolidated and Further Continuing Appropriations Act, Pub. L. 112-55 (2011).

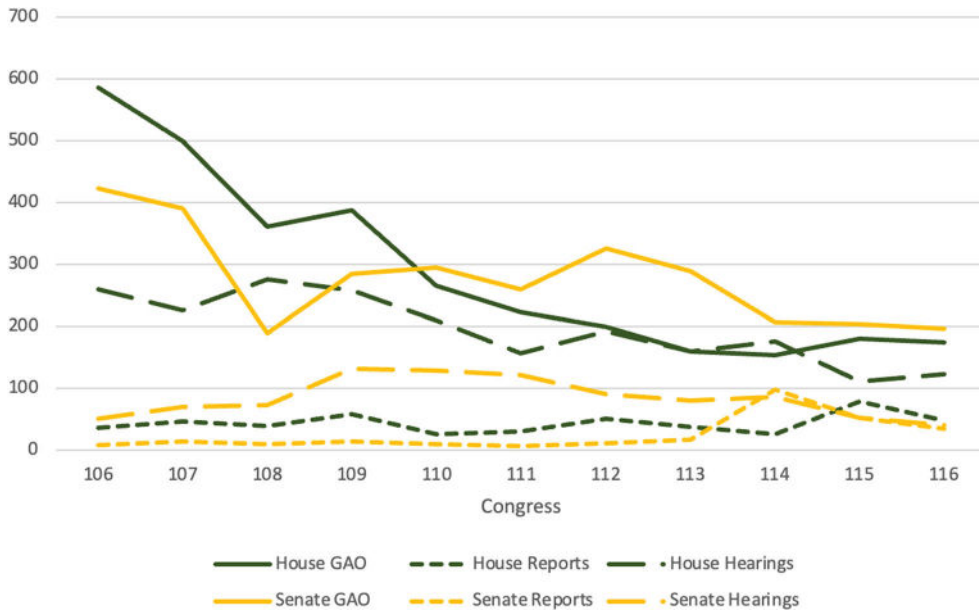


FIGURE 2 Government Accountability Office (GAO) communication, oversight reports, and hearings over time.

While reliance on GAO declined over time in both chambers, this was the predominant form of oversight in the Senate. From 2007 to 2021 (110–116th Congresses), GAO communicated with HSGAC at a higher frequency than it did with COR. HSGAC's use of GAO's program evaluation is understandable given the committee's smaller staff size—the agency helps supplement the committee's initial information gathering on executive activity. The observed patterns may also reflect the different perspectives of legislators in each committee. Because they serve shorter terms and likely more regularly seek out political information that can provide heuristic cues to help with reelection, committee members in the House may not find GAO's form of expertise as helpful as those in the Senate.

Differing reelection incentives and constituencies may also explain why the House and Senate vary with respect to their use of hearings as compared with oversight reports. If hearings offer the best platform for constructing a public narrative and for public position taking targeted toward constituents, then it is unsurprising that members of the House would feel a greater need to conduct hearings than those in the Senate. Put in the context of oversight as a symbol, COR may be more likely to rely on hearings as highly visible indicators that its members are performing their constitutional duties.

Intriguingly, the rates of HSGAC's use of oversight reports and hearings in recent years are very similar. The frequency of the two forms of oversight, combined with our earlier finding that oversight reports result in a hearing less than half of the time, suggests a strategic choice by the committee. At times legislators may find it more advantageous to hold a hearing, and at times legislators may prefer to issue informal documents that concisely frame the issue by highlighting a particular piece of evidence.

Given scholarly focus on the relationship between partisan institutional politics and congressional oversight (e.g., Kriner & Schickler, 2016; MacDonald & McGrath, 2016; Mayhew, 1991; Parker & Dull, 2009, 2012), we explore correlations between divided government and all three forms of oversight. In contrast with contemporary accounts of when oversight activity occurs, we find little relationship between partisan institutional dynamics and COR or HSGAC (or the committees' combined) use of GAO, oversight reports, or hearings.

Considered in the context of our conversations with government officials, the lack of a significant correlation between divided government and program evaluation, committee staff review, or hearings emphasizes the constitutional importance of oversight as a pervasive symbol in American democracy.

Most members of Congress and their staffs, regardless of partisan alignment, feel the need to conduct oversight— even in times of unified government. Legislators regularly monitor the executive, seeking opportunities to highlight congressional responsiveness to constituent concerns about the operation of government. Congressional investment of time and resources in the oversight process not only symbolizes a functioning democratic system but also signals to government officials and to the public that members of Congress seek responsive policy implementation.

Of course, given the nature of contemporary politics, we recognize the existence of a partisan component to oversight. Yet the effect of partisanship may be more nuanced than traditionally considered by scholars. For example, while there is no discernible difference in the total number of reports produced during unified and divided government, our data on committee staff review suggest minority reports are more common during times of unified government. This is unsurprising, considering the powers of the majority party to set the committee's agenda and committee chairs' corresponding authority to frame the debate and dictate the manner in which committees conduct oversight (Bibby, 1966; Diermeier & Feddersen, 2000; DeGregorio, 1992; Talbert et al., 1995). Oversight reports provide the minority party with an opportunity to sidestep the majority and to express publicly views on the executive.

IMPLICATIONS AND CONCLUSION

Returning to our initial example and our motivating excerpt from Rockman (1984), our research highlights the importance of considering oversight as more than a single variable. Our review of the literature, our informal discussions with people regularly engaged in interactions between the legislature and executive, and our data on the different ways congressional committees can keep tabs on the executive branch suggest a need for more careful scholarly evaluation of oversight. That begins with consistency in how scholars define the concept. We answer the question “what is oversight” with Congress's own institutional answer: oversight is the process of reviewing, monitoring, and supervising the implementation of public policy by the executive branch.

If oversight is a process, then operationalization of oversight through a proxy variable collected from one stage of the course of legislative activity may misrepresent the extent of, and motivations for, oversight. For example, empirical observations of hearings often result in academic conclusions that partisanship drives the conduct of oversight. These findings are hardly controversial in the modern political era. However, they tend to be the product of analysis of the stage in the oversight process strategically designed to provide members of Congress with an opportunity to take a position on high-profile issues in the political arena. Little existing research evaluates whether hearings systematically misrepresent either the character or relative amount of oversight Congress conducts—perhaps because the use of hearings to measure oversight and investigations is so ubiquitous (Dodd & Schott, 1979; West, 1998).

Admittedly, the observable indicators of oversight we explore in this article constitute a small portion of the legislature's control mechanisms (see Fisher, 1998; Selin, 2022). Future studies that expand consideration of the multitude of techniques Congress employs in the oversight process would help illuminate when legislators are more likely to rely on one tool over another. Do certain forms of information gathering early in the oversight process affect the use of other forms? For example, while we observed a decreased use of GAO over time in our data, perhaps congressional reliance on other government auditing resources such as inspector generals has increased over the same period. Empirical analysis that traces congressional investigation through the oversight process and documents how and when members of Congress, committees, and their staffs decide to use various techniques would provide a more complete picture of the legislature's ability to hold the executive branch accountable for its actions. Such analysis should also consider legislators' strategic choices *not* to rely on certain techniques.

Like our own study, scholarly considerations of oversight tend to explain the oversight process from the perspective of the legislature. As a result, we know comparatively little about how various

components of the executive branch organize operations in response to or in the wake of congressional oversight efforts. For example, have agencies developed procedures for receiving, processing, and responding to congressional inquiry? It would also be intriguing to explore how congressional oversight techniques vary with agency structure. Are agencies designed to be insulated from political control more susceptible to certain techniques over others?

More broadly, research on the oversight process should include more careful analysis of the effect of partisan polarization on oversight. Moving beyond blanket considerations of unified and divided government, on what types of issues are the parties more likely to work together during the oversight process? Does reliance on program evaluation from nonpartisan information sources promote bipartisanship? Furthermore, how does the executive branch strategically act during the oversight process? Are there certain political contexts in which we see the two branches working together in a way that prevents the need for a hearing? Answering questions like these can help scholars reevaluate assumptions about the benefit and effectiveness of the oversight process and shed light on the contemporary legislature's ability to hold the executive branch accountable.

In describing Congress as a “first among equals,” Rep. Jamie Raskin (D-MD) said,

Ever since President George Washington expressed surprise that the first Congress would not automatically accept his plans and nominees, presidents have sought to establish both their privileged place in our constitutional firmament and a realm of executive decision-making off limits to the supervision of others branches.... But legislators aren't consigned to watch the president trample our constitutional structure. (Raskin, 2019).

Our exploratory research suggests the legislature may act in this capacity much more often than scholars recognize.

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DATA AVAILABILITY STATEMENT

The data that support the findings of this study are available from the authors upon request and from the Levin Center for Oversight and Democracy's Congressional Oversight Records Database.

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