

What is congressional oversight?

Defining Congressional Oversight



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LEARNING BY HEARINGS

What is congressional oversight?	
Key Concepts	Congressional oversight, legislative powers, enumerated v. implied powers, checks and balances
Content Standards	<p>MI Civics – 3.1.1 Identify and describe the purposes, organization, powers, processes, and election of the legislative branch as enumerated in Article I of the Constitution.</p> <p>MI Civics – 3.1.4 Examine and evaluate the role of separation of powers and checks and balances in regard to the distribution of power and authority between the three branches of government.</p>
Assessment	Facilitate a brief discussion using the exit question as a prompt, “What is meant by referring to Congress as the “eyes and voice of the people?”
Extension/Taking Informed Action	Use one of the snapshots from our resource library to learn more about the examples used in the sorting activity. The reading can be used with the accompanying guided questions or as a jigsaw activity to compare and contrast historical examples of oversight.
References and Additional Resources	<p>Defining Congressional Oversight and Measuring its Effectiveness Sen. Carl Levin and Elise Bean</p> <p>What the US Constitution Says and Doesn’t Say About Truth Detroit Today (9/29/21)</p> <p>What is Oversight? Levin Center for Oversight and Democracy</p> <p>McGrain v. Daugherty, 273 U.S. 135 (1927)</p>

Required Supplies/Materials:









- Oversight sorting cards (one set per small group)
- Sticky notes, dry erase markers, or additional paper for sorting activity
- Defining Congressional Oversight reading (class set or digital access)
- Compelling question worksheet (one per student)

Suggested Pacing: One 60-minute class period

Lesson Sequence

1. Organize students into pairs or small groups with a shared workspace and one set of the oversight sorting cards. Using the cards, students will be participating in a sort-label-order visible thinking routine (adapted from [Project Zero](#)). Give students the following instructions, one stage at a time. Allow for at least 5 minutes of brainstorming and discussion for each step.
 - **Sort** the cards based on similarities or common ideas. Place ideas together in your workspace.
 - **Label** each grouping based on what they had in common or some characteristics that they share. This label should be one word or a short phrase (students can use a sticky note or piece of paper to keep track of the labels).
 - Organize these groups into a sensible **Order**. **(20 min)**
2. Have each group share out their labeled groups and a brief explanation of why they made the decisions that they did. Note similarities and differences between groups as students share. **(10 min)**
3. Guide student thinking by asking some of the following questions:
 - Is there a logical order for these steps to fall into? What shape might it make?
 - Are there any labels that could appear in more than one spot?

- What are most of these cards examples of? **(5 min)**
- 4. Hand out the “Defining Congressional Oversight” reading and compelling question worksheet to all students. Give them time to read silently or aloud as a class. Using the experience of the sorting activity and the reading, have students complete the worksheet. **(15 min)**
- 5. For the assessment, facilitate a brief discussion using the exit question as a prompt: What is meant by referring to Congress as the “eyes and voice of the people?” **(5 min)**

<p>President Nixon hides information regarding a break in at the Democratic National Committee in Washington D.C.</p> 	<p>The Watergate Hearings begin in 1973.</p> 	<p>Ethics in Government Act of 1978: This law creates the federal Office of Government Ethics and requires certain government officials, including the president, vice president, members of Congress, officers of the executive branch, and others, to submit financial disclosure forms.</p> 	<p>Limits are placed on sources and amount of campaign contributions for political candidates.</p> 
<p>The first scientific evidence that smoking causes cancer in rats is published in 1953. The next year, the British Medical Journal links it to lung cancer, heart disease, and other serious health problems. In 1964, the U.S. Surgeon General publishes a seminal report confirming causal links between smoking and cancer. Despite the dire research, millions of Americans – around 1/3 of adults in the 1960s and 70s – continue to light up, and deaths attributed to smoking remain high.</p> 	<p>In 1982, Representative Waxman (CA) holds the first congressional hearing on the health risks of smoking.</p> 	<p>In 1984, Congress passes the Comprehensive Smoking Education Act. The law directs “the Secretary of Health and Human Services to inform the public of the health hazards of cigarettes through research, demonstration, and educational activities.”</p> 	<p>Tobacco becomes regulated as a drug, instead of a food product.</p> 

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Senator John McCain of Arizona launches an investigation into the Washington world of political lobbying. The two-year (2004-2006) McCain inquiry exposes an extensive web of corrupt lobbying practices and leads to high-profile resignations, prison sentences, and lobbying reforms.



On September 14, 2007, President George W. Bush signs into law the Honest Leadership and Open Government Act which makes numerous improvements to federal lobbying and ethics laws. The bill passes Congress with broad bipartisan support, 411 to 8 in the House and 83 to 14 in the Senate.



Since the first Abramoff scandal hearing, the amount of money paid to lobbyists has skyrocketed. In 2004, lobbyists report receiving \$237 million to influence legislation in Congress; in 2019, the total exceeds \$1.7 billion. That sevenfold increase reflects lobbying reforms which led to more lobbying disclosures, but also an ongoing expansion of lobbying activities at the federal level.



In 1920, President Woodrow Wilson sets aside three tracts of oil-rich land to be used in national emergencies. In 1922, constituents contact their senators about the leasing of these oil fields in Teapot Dome, WY and Elk Hills, CA to private oil tycoons. Both leases provide terms very favorable to the oil companies, and with no competitive bidding and no public communication.



On April 15, 1922, Wyoming Democratic senator John Kendrick introduces a resolution to investigate the Teapot Dome Scandal.



In 1924, Congress enacts a law stating that if the chair of the House Committee on Ways and Means, Senate Committee on Finance, or Joint Committee on Taxation requests a tax return or return information, the Treasury Secretary "shall furnish" it. Now codified as 26 U.S.C. 6103(f)(1), Congress has used the authority only sparingly since 1924, but it remains an important oversight tool.



In the 1927 case *McGrain v. Daugherty*, the Supreme Court explicitly recognizes the right of Congress to investigate, issue subpoenas, and compel information, including the right to enforce its subpoenas through imprisonment.



Compelling question	What is congressional oversight?
Source	Defining Congressional Oversight
Adapted From: Levin, Carl, and Elise J Bean. "Defining Congressional Oversight and Measuring Its Effectiveness." Wayne Law Review, vol. 64, no. 1, spring 2018, pp. 1–22. https://levin-center.org/wp-content/uploads/2021/09/accessible_levin_bean_final_format_sheridan_06-27-19.pdf	

"It is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees. It is meant to be the eyes and the voice, and to embody the wisdom and will of its constituents."

Trump v. Mazars USA, LLP, 140 S.Ct. 2019, 2031 (2020), citing *United States v. Rumely*, 345 U. S. 41, 43 (1953) which quoted an article by Woodrow Wilson.

Article I of the U.S. Constitution establishes the Congress of the United States and gives it a long list of notable "powers," including the power to enact legislation, raise revenue, and provide for the common defense and general welfare of the country. However, if Congress wants to evaluate existing laws, determine whether new laws are needed, or write useful legislation, it needs to understand the problems of the country and how the current system operates. If Congress wants to exercise the power of the purse, it needs to determine where taxpayer dollars should be spent and in what amounts. If Congress wants to meet its constitutional responsibility to provide checks and balances to the rest of government, it needs to screen nominations made by the president and evaluate the judiciary. If Congress wants to declare war, it needs to understand the conflict at hand. In every instance, Congress needs to be able to learn the facts, identify the issues, and share what it has learned with the public. It needs to investigate.

Authority of Congress to investigate

Although Congress has conducted investigations from its earliest days, it was not until 1927 that the U.S. Supreme Court weighed in. The key case called *McGrain v. Daugherty* arose out of the Teapot Dome corruption scandal of the 1920s, which triggered an investigation by a Senate committee into misconduct related to certain federal oil leases. Later, the Senate established another committee to examine the failure of the U.S. Attorney General to prosecute the wrongdoing. As part of its inquiry, the Senate select committee issued a subpoena seeking oral testimony from the Attorney General's brother. When the brother refused to comply, he was taken into custody by Congress. He sued in court to end both his imprisonment and the investigation. The Supreme Court, in an 8-0 decision, upheld the right of Congress not only to conduct the investigation but also to subpoena information and enforce its subpoenas with imprisonment. The Court explained:

[T]he power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function. ... A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information – which not infrequently is true – recourse must be had to others who do possess it. Experience has taught that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed.

Subsequent Supreme Court cases reinforced the authority of Congress to conduct wide-ranging investigations. In *Watkins v. United States* (1957), for example, the Court wrote:

The power of Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defects in our social, economic or political system for the purpose of enabling

Congress to remedy them. It comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste. At the same time, the Supreme Court cautioned in several cases that Congress' power to probe had limits. For example, the Court required Congress to respect the constitutional rights of individuals. Because of the Supreme Court decisions, while some aspects of congressional oversight continue to be debated, the right of Congress to conduct wide-ranging investigations to carry out its legislative responsibilities is now settled law.

Who conducts congressional investigations

Most congressional investigations are conducted by a committee or subcommittee established by the U.S. House of Representatives or U.S. Senate. Committees and subcommittees typically take the lead on congressional investigations since they are empowered by law and congressional rules to hold hearings and issue subpoenas, both of which often play critical roles in fact-finding. In addition, within Congress, only committees and subcommittees have the staff and resources needed to undertake complicated inquiries. Throughout its history, Congress has used both its standing committees and newly created special committees to conduct its inquiries. Today, the House and Senate each sponsor about two dozen standing and select committees. Their assigned jurisdictions, detailed in House and Senate rules, are suggested by their names such as the Committee on Agriculture, Committee on Armed Services, and Select Committee on Intelligence. One standing committee in each house has unusually broad jurisdiction to conduct wide-ranging investigations across government—the Committee on Oversight and Reform in the House, and the Committee on Homeland Security and Governmental Affairs in the Senate. Both committees are known for their oversight investigations.

While most congressional oversight investigations have been undertaken by a committee or subcommittee, some individual members of Congress have also conducted noteworthy investigations, despite having no authority to call hearings or issue subpoenas. Using other methods to uncover the facts, those members have issued reports or taken other actions to announce what they found on issues of interest to their states, districts, or constituents.

Types of oversight investigations

All standing committees in the House and Senate are required to conduct oversight of the laws within their assigned subject matter jurisdiction. Ideas for investigations might come from a committee's routine oversight work; in connection with re-authorizing a law or examining the use of federal funds; in response to complaints made by constituents, public interest groups, or industry associations; or in reaction to a scandal, disaster, or wrongdoing in the news. Congressional oversight investigations routinely examine actions taken by government agencies and private companies. The scope and intensity of an investigation depend upon a range of factors including the importance of the problem, the level of interest in the committee and its leaders, the press of other work, the extent to which facts are in dispute or involve wrongdoing, and the degree of media attention.

Many oversight efforts are limited in scope, involving only a few telephone calls, briefings, or letters to get the facts, understand the issues, and identify or encourage a policy outcome. Others dig more deeply and may ask the subject of the investigation to answer detailed questions, provide documents, or appear at a hearing. A full-blown congressional investigation may involve an inquiry lasting a year or longer complete with subpoenas, the collection and review of substantial documents, the conduct of hundreds of interviews, extensive fact-finding, and one or more congressional hearings and reports.

Name: _____

Compelling question: What is congressional oversight?

Directions: After completing the sorting activity and “Defining Congressional Oversight” reading, answer the following questions. In the diagram, label each step of the oversight process and provide at least one example from the sorting activity.

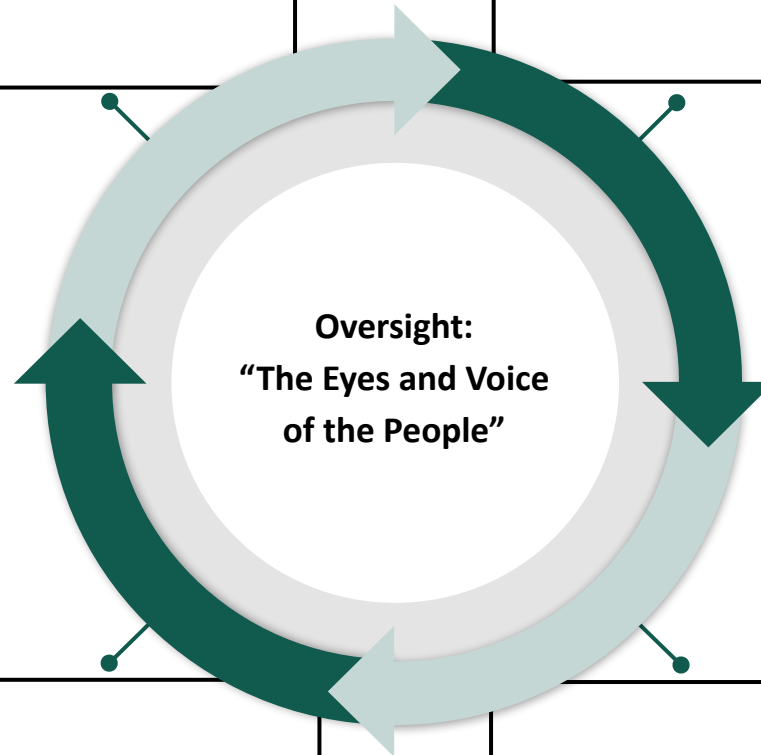
Why does Congress need to conduct investigations?




Where does the legislative power to conduct an investigation come from?



Who conducts an oversight investigation?



What might cause an investigation to begin?



Exit Question: What is meant by referring to Congress as the “eyes and voice of the people”?

Defining Congressional Oversight **ANSWER KEY**

Sorting Activity

Students may group their sorting cards based on chronology or a shared event. Remind students to look for what is similar about each of the cards so that they can recognize which are identifying problems, which are identifying reactions or solutions, and which are explaining steps in the investigation process. Encourage students to look beyond grouping events only in chronological order. For organizational purposes, here are the details of each event matched with their respective investigation.

<u>Thomas Walsh and the Teapot Dome Investigation</u>	
Problems/Concerns	In 1920, President Woodrow Wilson set aside three tracts of oil-rich land to be used in national emergencies. In 1922, constituents contact their Senators about the leasing of these oil fields in Teapot Dome, WY and Elk Hills, CA to private oil tycoons. Both leases provided terms very favorable to the oil companies, and with no competitive bidding. Neither the public nor Congress had been informed of the leases beforehand.
Examples of Oversight Investigation	On April 15, 1922, Wyoming Democratic senator John Kendrick introduced a resolution to investigate the Teapot Dome Scandal.
Legislative and Public Policy Outcomes	In 1924, Congress enacted a law stating that if the chair of the House Committee on Ways and Means, Senate Committee on Finance, or Joint Committee on Taxation requested a tax return or return information, the Treasury Secretary “shall furnish” it. Now codified at 26 U.S.C. 6103(f)(1), Congress has used the authority only sparingly since 1924, but it has remained an important oversight tool.
Implementation	In the 1927 case, <i>McGrain v. Daugherty</i> , the Supreme Court explicitly recognized the right of Congress to investigate, issue subpoenas, and compel information, including the right to enforce its subpoenas through imprisonment.

<u>The Watergate Hearings</u>	
Problems/Concerns	President Nixon hides information regarding a break-in at the Democratic National Committee in Washington D.C.
Examples of Oversight Investigation	The Watergate Hearings begin in 1973.
Legislative and Public Policy Outcomes	Ethics in Government Act of 1978: This law created the federal Office of Government Ethics and required certain government officials to submit financial disclosure forms, including the president, vice president, members of Congress, officers of the executive branch, and others.
Implementation	Limits are placed on sources and amount of campaign contributions for political candidates.

<u>Henry Waxman and Big Tobacco</u>	
Problems/Concerns	The first scientific evidence that smoking caused cancer in rats was published in 1953. The following year, the British Medical Journal linked it to lung cancer, heart disease, and other serious health problems. In 1964, the U.S. Surgeon General published a seminal report confirming causal links between smoking and cancer. Despite the dire research millions of Americans – around 1/3 of adults in the 1960s and 70s – continued to light up, and deaths attributed to smoking remained high.
Examples of Oversight Investigation	In 1982, Representative Waxman (CA) held the first congressional hearing on the health risks of smoking.
Legislative and Public Policy Outcomes	In 1984, Congress passed the Comprehensive Smoking Education Act. The law directed “the Secretary of Health and Human Services to inform the public of the health hazards of cigarettes through research, demonstration, and educational activities”
Implementation	Tobacco becomes regulated as a drug, instead of a food product.

<u>John McCain and the Abramoff Tribal Lobbying Scandal</u>	
Problems/Concerns	The Washington Post published a detailed account of the extremely high fees that several Native American tribes were paying Washington lobbyists.
Examples of Oversight Investigation	Senator John McCain of Arizona launched an investigation into the Washington world of political lobbying. The two-year (2004-2006) McCain inquiry exposed an extensive web of corrupt lobbying practices and led to high-profile resignations, prison sentences, and lobbying reforms.
Legislative and Public Policy Outcomes	On September 14, 2007, President George W. Bush signed into law the Honest Leadership and Open Government Act which made numerous improvements to federal lobbying and ethics laws. The bill passed Congress with broad bipartisan support, 411 to 8 in the House and 83 to 14 in the Senate.
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Reading and Comprehension Questions

1. Why does Congress need to conduct investigations?

For Congress to carry out its constitutional duties (raise revenue, enact legislation, declare war, provide for the common welfare, etc.) it must conduct investigations to gain the information necessary to make important decisions.

2. Where does the legislative power to conduct an investigation come from?

Following the Teapot Dome corruption scandal in the 1920s, a Supreme Court case called McGrain v. Daugherty arose. In this 8-0 the decision, the Supreme Court upheld the right of Congress not only to conduct an investigation but also to

subpoena information and compel compliance. This was the first Supreme Court ruling on this matter.

3. Who conducts an oversight investigation?

Most congressional investigations are done by a committee or subcommittee of the House or Senate. Occasionally, individual members of Congress have conducted investigations on issues important to them or their states.

4. What might cause an investigation to begin?

An inquiry could arise from a committee's routine efforts. They could also be a reaction to a scandal or disaster, a complaint by a constituent, or a report in the news about wrongdoing.

5. Exit question: What is meant by referring to Congress as the “eyes and voice of the people”?

Answers will vary. Students should acknowledge that in a representative democracy, we expect our elected officials to serve as our voice in Washington DC. They are also responsible for bringing back information to our community to provide us with facts.