

Congress and oversight

Key term

Oversight Congressional review and investigation of the activities of the executive branch of government.

Having studied Congress's legislative function, we now turn to a second important function of Congress, that of **oversight** of the executive branch. The Constitution does not explicitly grant Congress oversight responsibility. But it does give Congress the power to make laws, and over the years oversight of the executive branch has come to be seen as an implied power of Congress. Members of Congress have to know what is going on in order to make the laws, see how the laws they have passed are working, and amend the laws. And to carry out this oversight, Congress has given itself a number of significant powers: to subpoena documents and testimony; to hold individuals in contempt if they fail to comply with Congress's demands for information; and to make it illegal to lie to Congress. Congressional oversight also includes the Senate's power of confirmation of numerous presidential nominations as well as its power to ratify treaties.

We have already touched on Congress's oversight function when we were considering the work of congressional committees, for it is in the committee rooms of Congress that most of the oversight takes place. The reason for this is fundamental — the absence of the executive branch from the chambers of Congress. It is only in the committee rooms that members of the executive branch can be questioned. And we have also seen that because the standing committees of Congress are permanent policy specialist bodies, they can wield a considerable degree of clout. Some examples of recent committee oversight hearings are given in Table 3.11. But activity is not always the same as achievement. So the question arises as to whether congressional oversight is effective. Does Congress act as a watchdog or merely as a lapdog?

Table 3.11 Examples of standing committee oversight hearings during 2016

Committee	Investigation
House Homeland Security Committee	ISIS in the Pacific: assessing terrorism in Southeast Asia
House Armed Services Committee	US strategy for Syria and Iraq
Senate Judiciary Committee	The need for a Balanced Budget Amendment to the Constitution
Senate Foreign Relations Committee	US–China relations: strategic challenges and opportunities
Senate Commerce, Science and Transportation Committee	The future of self-driving cars

There is quite a bit of agreement — as well as much evidence to support the theory — that congressional oversight of the executive is only really effective when Congress is not controlled by the president's party. Exhibit A in this argument is the fact that almost all modern-day examples of the Senate's rejection of presidential nominations, whether to the executive or judicial branches, have come when the president's party has not controlled the Senate. It was a Democrat Senate in 1987 which rejected Republican president Ronald Reagan's nomination of Robert Bork to the United States Supreme Court. The same was true of the Senate's 1989 rejection of George H.W. Bush's nomination of John Tower to be secretary of defense. In reverse, it was a Republican Senate which, in 1999, rejected both Bill Clinton's nomination of Ronnie White to be a federal trial court judge and his Nuclear Test Ban Treaty.

Exhibit B would be the relationship between Congress and President George W. Bush during his eight-year term. Throughout most of the first six years (2001–06), Bush's Republican Party controlled both houses of Congress. There was a brief 18-month period between June 2001 and December 2002 when the Democrats controlled the Senate, but by only one vote, and much of this period coincided with the President's sky-high approval ratings following the attacks on New York and Washington on 11 September 2001. During these years, congressional oversight was light, if not at times almost non-existent. Democrat Congressman Steny Hoyer pointed out that oversight activity during this period was low even by the standards of other periods of united government. So, for example, in 1993 and 1994 when Democrats controlled Congress during Democrat Bill Clinton's first two years, there were 135 oversight hearings held. In contrast, in 2003 and 2004 the Republican-controlled Congress held only 37 oversight hearings.

But that all changed following the Republicans' loss of control in both houses in the 2006 midterm elections. Indeed, some Republicans even conceded that, had they done a better job of oversight when they held the majority, they might not have been so severely punished by the voters. Once the Democrats took control on Capitol Hill in January 2007, the President found himself facing some very feisty committee chairs. 'We are not a potted plant, watching the administration function,' commented the House Foreign Affairs Committee chairman Tom Lantos. The Senate Appropriations Committee chairman Robert Byrd told the secretaries of state and defense, and the chairman of the Joint Chiefs of Staff in February 2007: 'Congress is not a rubber stamp or a



Former Secretary of State Hillary Clinton prepares to give evidence to the House Select Committee on Benghazi, 22 October 2015

presidential lapdog, obedient and unquestioning. Oversight, oversight, oversight is among our most important responsibilities, and oversight, oversight, oversight has been lacking for far too long.'

Assessing Congress's effectiveness in oversight

Key term

Divided government When different political parties control the executive branch and at least one chamber of Congress (the opposite of unified government).

So how effective is congressional oversight? To some, congressional oversight — especially at times of **divided government** — is just a polite phrase for trying to embarrass the president and his administration. Republican Senator Jim DeMint of South Carolina described Democrats' oversight of George W. Bush in 2007 as 'political posturing and demagoguing' which 'hasn't really changed anything'. Five years later, the boot was on the other foot when House Republicans organised hearings in no fewer than six committees on the terrorist attack in Benghazi, Libya, in September 2012. Two Senate committees also held hearings. It was estimated that in total, these eight committee hearings interviewed 252 witnesses, published 13 separate reports running to nearly 2,000 pages, and asked over 3,000 questions. The main reason for all this apparent oversight activity — although few Republicans would openly admit it — was that Hillary Clinton, who was serving as secretary of state when the attack took place, was the front-runner in the race to become the Democratic Party's presidential candidate in 2016.

It is worth asking whether all this oversight activity by Congress ultimately produces wiser policies and more effective implementation. According to congressional scholars Norman Ornstein and Thomas Mann (2007), 'While the constitutional arsenal of Congress is powerful, it has limited ability to quickly reverse the course set upon by a determined president.' But, they continue: 'Oversight keeps an administration on its toes; the lack of oversight, and the expectation that there will be none, leads to complacency, arrogance and maladministration.' Ironic, therefore, that the congressional Republicans might be held responsible for some of the failings of George W. Bush's Republican administration, and likewise that congressional Democrats could be blamed for some of Obama's failures, simply because they didn't criticise enough.

The effectiveness of Congress in its oversight role also depends on a number of variables. We have already seen that party control is one such variable. Watch out for the degree to which Republicans in Congress use their oversight powers on the administration of President Trump. Another is the relative popularity of Congress as compared with that of the incumbent president. Over recent years, Congress's standing in the eyes of the public has reached historic lows. This lessens its chances of acting as an effective check on the executive branch. As the president's approval rating ebbs and flows over a four- or eight-year period, this too affects the relationship between Congress and the White House. Congress finds it much easier to curb the actions of an unpopular president than of a popular one. The size of the president's mandate at the last election is therefore another relevant factor. A president who wins by a landslide (Ronald Reagan in 1984) is much less vulnerable than a president who has won with only a minority of the popular vote (Bill Clinton in both 1992 and 1996), or one who actually lost the popular vote, like Donald Trump. Finally, a national crisis — such as 9/11 — will usually strengthen the president's hand at Congress's expense.