



Congressional Oversight and Investigations

Since its inception, Congress has engaged in oversight of the executive branch which, broadly defined, includes the review, monitoring, and supervision of the implementation of public policy. The first Congresses inaugurated such important oversight techniques as special investigations, reporting requirements, and the use of the appropriations process to review executive authority. In modern time, congressional oversight can occur in virtually any legislative activity and through a wide variety of channels, organizations, and structures. These activities range from formal committee hearings to informal Member or staff contact with executive officials; from staff studies to support-agency reviews; and from casework conducted by Member offices to studies prepared by non-congressional entities such as commissions and inspectors general.

Legal Authority for Oversight

Generally, Congress's power to obtain information, including classified and/or confidential information, is extremely broad. While there is no express constitutional provision authorizing congressional oversight or investigations, the Supreme Court has firmly established that such power is so essential to the legislative function as to be implied from the general vesting of legislative powers in Congress in Article I.

The Supreme Court on Congressional Oversight

Eastland v. United States Serviceman's Fund: the "scope of its power of inquiry...is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution."

Watkins v. United States: the "power of the 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."

Oversight and investigative authority rests with the House of Representatives and the Senate, which in turn have delegated this authority to various entities, most relevantly the standing committees of each chamber. Committees only possess powers that have been delegated to them by their parent body. Committee investigations must:

- be within the committee's jurisdiction as defined in House or Senate rules, and
- serve a valid legislative purpose.

Once these criteria are met, a committee's investigative purview is substantial and wide-ranging.

Major Purposes of Oversight

Oversight is an implicit constitutional obligation of Congress. There are a number of overlapping purposes associated with oversight, which can be divided into three basic types: programmatic, political, and institutional.

Programmatic purposes include making sure agencies and programs are working in a cost-effective and efficient manner and fulfilling their statutory mission; ensuring executive compliance with legislative intent; evaluating program performance; improving the economy of governmental performance; investigating waste, fraud, and abuse; reviewing the agency rulemaking process; and acquiring information useful in future policymaking.

Political purposes include generating favorable publicity for lawmakers; winning electoral support from constituents and outside groups; and rebutting criticisms of favorite programs or agencies. Oversight occurs in an ever-present political context in which Congress's relationship with administrative entities can range from cooperation to conflict. Moreover, there are inherent constitutional and political tensions between Congress and the President even during periods of unified government. Partisan and inter-branch conflicts commonly arise in the oversight context.

Institutional purposes include checking the power of the executive branch; investigating how a law is being administered; and informing Congress and the public. These purposes may merit special mention because they serve to protect congressional prerogatives and strengthen the American public's ability to continuously evaluate executive activities and actions.

Fostering Effective Oversight

Although there may be disagreements as to what constitutes "quality" oversight, there are a number of components that appear to foster effective oversight, including

- a committee chair committed to doing oversight on a sustained basis;
- the involvement of committee Members, despite the intensive use of time and resources;
- bipartisanship—more is likely to be achieved when both parties work together rather than against each other;
- an experienced professional staff with investigatory skills;
- preparation and documentation before hearings;
- coordination with other relevant committees of jurisdiction; and

- follow-through to ensure that any committee recommendations are acted upon.

Helpful, too, is a cooperative Administration. Absent cooperation, committees may need to use compulsory processes (subpoena; contempt citation) to obtain pertinent reports, documents, and the testimony of key witnesses.

Legal Tools Available for Oversight and Investigations

There is no single method or set of procedures used to conduct oversight or an investigation. Historically, congressional committees appeared to rely a great deal on public hearings and subpoenaed witnesses to garner information and accomplish their investigative goals.

Congressional Subpoenas

Every standing committee and subcommittee is delegated the authority to issue subpoenas in House and Senate rules. How subpoenas are issued varies by committee—some require a full committee vote while others empower the chairman to issue them unilaterally, or with the concurrence of the ranking Member.

In more recent years, congressional committees have seemingly relied more heavily on staff level communication as well as other “informal” attempts at gathering information—document requests, informal briefings, etc.—before initiating the necessary formalistic procedures such as issuing committee subpoenas, holding on-the-record depositions, and/or engaging the subjects of inquiries in open, public hearings.

Limitations on Congressional Authority

Constitutional limits apply to Congress’s oversight and investigative powers.

The Supreme Court on Oversight Limitations

Barenblatt v. United States: “Congress, in common with all branches of the Government, must exercise its powers subject to the limitations placed by the Constitution on governmental action, more particularly in the context of this case, the relevant limitations of the Bill of Rights.”

It appears that the following constitutional protections are applicable to congressional oversight and investigations:

- the First Amendment’s protections of speech, press, religion, and assembly;
- the Fourth Amendment’s prohibition against unreasonable searches and seizures; and
- the Fifth Amendment’s right to due process and privilege against self-incrimination.

Other rights in the Bill of Rights, such as the Sixth Amendment’s confrontation right, are inapplicable.

Executive Privilege can act as a significant limitation on Congress’s authority to obtain information from the executive branch. The privilege, which is constitutionally rooted, has been invoked when Congress asks the executive branch to produce documents or testimony that reflect presidential decision making and deliberations that the President believes should remain confidential. The privilege is qualified, not absolute; a presidential assertion of the privilege can be overcome by an adequate showing of need.

Information Access Issues and Enforcement of Requests for Information

Congressional oversight and investigations can often, though not always, become adversarial. This is especially true when the targeted entity, whether a private individual, corporation, or executive branch agency, has information Congress considers necessary to its inquiry but refuses to disclose. In those situations the targeted entity may attempt to use several methods to avoid disclosure, such as asserting that the information cannot be disclosed due to a specific law, rule, or executive decision. Congress has a number of tools at its disposal to force compliance with committee subpoenas.

Enforcement Mechanisms

Contempt of Congress: the chief means by which Congress can seek to have an individual punished for noncompliance with a subpoena.

Civil enforcement of subpoenas: Congress may seek a federal court decision declaring that the individual in question is legally obligated to comply with the congressional subpoena.

Minority Party and Individual Member Authority to Conduct Oversight

The role of Minority Members in the oversight process is governed by the rules of each house and its committees. Minority Members are specifically accorded some rights. For example, when a hearing is conducted in the House, the minority may, upon the written request of a majority of its members to the chairman before completion of the hearing, call witnesses selected by the minority. Ranking Members and individual Members are not authorized by house or committee rules to start official committee investigations or issue subpoenas. Individual Members may seek the voluntary cooperation of agency officials or private persons. However, no judicial precedent has directly recognized a right in an individual Member, other than a committee chair, to exercise a committee’s oversight authority without the permission of a majority of the committee or its chair.

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