

Site Visits, Information Gathering, and Oversight by Members of Congress

November 21, 2025

Several disputes have arisen in the 119th Congress surrounding access by Members of Congress to federal buildings. On several occasions, Members have been [denied entry](#) to various agency offices, and at least one Member was forcibly [removed](#) from an agency press conference in a federal building. A group of Members [sued](#) Immigration and Customs Enforcement (ICE) after they were refused access to immigration facilities, and, in a separate incident, one Member has been [indicted](#) for an altercation with law enforcement that occurred while attempting to inspect an ICE facility.

These controversies—which, though not [novel](#), appear to be occurring with more frequency—seem to stem not only from differing interpretations of federal law by the executive and legislative branches but also from an interbranch disagreement over a Member’s role in overseeing executive activities. The executive branch has at times asserted that agencies retain [authority](#) to control access to their buildings and that [individual Members](#) of Congress generally “do not have the authority to conduct oversight” except through an authorized committee investigation. Some Members, on the other hand, have argued for a [legal right](#) to access federal property that stems from federal statute and their individualized constitutional authority both to inform themselves on legislative matters and conduct oversight of the executive’s implementation of federal law.

This Sidebar addresses this disagreement by discussing legal principles that govern the exercise of oversight by individual Members. Members of both chambers and both parties have long engaged in their [own efforts](#) to inform themselves of agency activity and confirm that a given executive agency is implementing the law in a way that comports with that Member’s view of the statutory powers that Congress has entrusted to that agency. The courts have also [recognized](#), in various [contexts](#), that investigating and overseeing the executive branch is part of the official responsibilities of a Member of Congress.

Still, the Constitution says very little about the individual rights of Members of Congress and nothing about individual Member oversight. There are few federal laws or chamber rules that directly and explicitly empower Members to act unilaterally to obtain information from the executive branch and perhaps one [law](#) that explicitly governs Member access to federal facilities for oversight purposes. (In that case, the provision applies only to certain Department of Homeland Security immigration centers.) Instead, House and Senate rules and federal statutes that [delegate](#) formal investigatory and oversight

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LSB11376

authority generally do so to committees and committee chairs. While either chamber could vest each of its Members with compulsory investigative tools—for example, by providing all Members with the power to issue subpoenas or establishing a broad-based right of access to federal property—neither the House nor the Senate has explicitly done so. As a result, although individual Members possess an implicit constitutional responsibility to conduct oversight of the executive branch and inform themselves of matters of legislative importance, they do not appear to have easy access to the tools that may allow them to overcome an agency’s resistance to their information-gathering efforts.

Congressional Oversight Powers and Limits

As analyzed in greater detail in other CRS [products](#), both the House and Senate have an implied constitutional power to investigate matters relating to their legislative functions—a power that includes conducting oversight of the executive branch. The Supreme Court has [described](#) this power as “broad” and one that “encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes.” To effectively perform its legislative responsibilities, the Court has [recognized](#) that Congress must know whether an agency’s functions are “being properly discharged or . . . neglected or misdirected, and particularly whether [agency officials are] performing or neglecting their duties.”

Each chamber has [delegated](#) this constitutional “power of inquiry,” including the tools necessary to gather information, to its standing committees through House or Senate rules. Under these rules, committees may conduct investigations, hold hearings, call witnesses, take depositions, and issue and enforce subpoenas, and under [federal statute](#), committees are to use their powers and tools to “review and study, on a continuing basis,” the implementation of law by federal agencies.

Congress is not a law enforcement agency, and it therefore generally does not conduct the type of physical search that, by comparison, is typical of an executive branch criminal investigation. Still, Congress gathers information necessary to inform and support its various legislative functions in many ways. For example, though not explicitly referenced in House or Senate rules, site visits and inspections of federal property have long been one tool in Congress’s oversight toolbox. This practice likely derives from a combination of Congress’s implicit oversight powers and its explicit [constitutional authority](#) to “make all needful Rules and Regulations respecting . . . Property belonging to the United States.” As described in a recent [filing](#) by a group of Members denied access to ICE facilities, examples of “on the ground oversight” can be traced back to investigations by the Continental Congress and were a prominent part of the investigation into wartime waste during World War II conducted by the Senate Special Committee to Investigate the National Defense Program (Truman Committee). Truman Committee Members and staff visited and inspected U.S. Army housing camps, military manufacturing facilities, and allied military bases abroad. Members undertook similar investigative activities during the Civil War, when Members of the [Joint Committee on the Conduct of the Civil War](#) inspected “Camp Convalescent” in Alexandria, VA, following allegations of unacceptable conditions at that military hospital. In-person site visits, of both government and private property, remain a regular feature of [modern](#) congressional investigations.

In addition to this practice, courts have also recognized field investigations and inspections as a component of congressional fact-finding. In *McSurely v McClellan*, for example, the U.S. Court of Appeals for the D.C. Circuit (D.C. Circuit) [announced](#) that it had “no doubt that information gathering,” by either “field work” or “field investigations” by a committee Member or his staff, “is essential to informed deliberation over proposed legislation” and that “the acquisition of knowledge through informal sources is a necessary concomitant of legislative conduct.”

The House and Senate have not, however, provided their committees with limitless investigative power. [Committees](#) may only use compulsory tools that have been given to them by their parent chamber, and then only when investigating matters within the committee’s delegated jurisdiction—or, put another way, they are “restricted to the missions delegated to them.” In practice, Congress’s constitutional powers of

investigation and oversight are typically carried out by committees under the powers and restraints provided by House and Senate rules.

Individual Member Oversight Powers

In contrast, Members, acting on their own, have not been delegated the same investigatory powers and tools as committees. An [individual Member](#) (other than a committee chair if delegated that authority by the parent chamber or by the rules of their committee) may not unilaterally convene an official committee hearing, initiate an official committee investigation, issue a subpoena, or seek enforcement of a subpoena through contempt.

Nevertheless, these specific and formal powers represent a small portion of what may be considered congressional “oversight.” Every [Member of Congress](#) has the ability, as “an officer of the union, deriving his powers and qualifications from the Constitution,” to leverage their position to influence agency action or gather information necessary to do their job. Also, though the Constitution does not vest the [legislative power](#) “in any one individual,” the “action of the body as a whole” requires the consent of “the aggregate of the members who compose the body.” As [explained](#) by the D.C. Circuit, “[a]ll Members have a constitutionally recognized status entitling them to share in general congressional powers and responsibilities, many of them requiring access to executive information.” Each individual Member therefore participates in the exercise of Congress’s legislative and investigative powers. It would appear that the same can be said for the exercise of committee power: though investigative jurisdiction and authorities have been delegated to committees, each [Member](#) of the committee shares in that power, and “each is entitled to request such information from the executive agencies as will enable him to carry out the responsibilities of a legislator.”

Statutory Sources of Member Oversight Functions

While limited, some statutory provisions support the oversight activities of individual members. For example, some provisions of federal law require agencies to [disclose](#) specific types of information “upon request of any Member of Congress.” Another law, [5 U.S.C. § 2954](#), requires agencies to comply with requests for information made by seven Members of the House Committee on Oversight and Government Reform or five members of the Senate Committee on Homeland Security and Governmental Affairs. Various agency [regulations](#) similarly recognize an individual Member’s right of access to certain types of information, and the Department of Justice Office of Legal Counsel, though noting that individual Members have generally not been delegated investigative powers, nevertheless has [reasoned](#) that Members’ requests should be given “due weight and sympathetic consideration” out of “respect for the legislative functions of individual members.”

Relevant to many of the ongoing disputes, Congress has also used its power of the purse to support Member oversight activities. Since 2019, Congress has repeatedly enacted an appropriations provision that affirms the right of Members to physically inspect certain immigration facilities for oversight purposes. The [initial law](#) prohibited the use of appropriated funds to “prevent a Member of Congress from entering, for the purpose of conducting oversight, any facility operated by or for the Department of Homeland Security used to detain or otherwise house alien minors.” Congress later [expanded that law](#) to prohibit the use of funds to deny Members access to “any facility operated by or for the Department of Homeland Security used to detain or otherwise house aliens.” The current appropriations [restriction](#) also explicitly provides that “[n]othing in this section may be construed to require a Member of Congress to provide prior notice” of their intent to enter such a facility, though DHS may require that congressional staff provide the agency with 24 hours’ notice.

Enforcement of Oversight Requests

Ultimately, the primary distinction between the exercise of investigative powers by the House or Senate (through its committees) and individual Members is that committees have the power and tools (albeit with [limitations](#)) to overcome resistance to their oversight efforts and enforce their demands for information. Committees can [compel compliance](#) with their requests by issuing subpoenas and enforcing those subpoenas (with the approval of the parent chamber) either in court or through criminal contempt of Congress referrals. Members, on the other hand, generally cannot utilize these mechanisms. Even when acting pursuant to statutory powers, Members have often [struggled](#) to enforce their rights. While Members may request information from an agency and exert various forms of pressure to increase the likelihood of compliance with their requests, they generally have not been able to legally compel an agency, in court or otherwise, to disclose information that the agency is otherwise reluctant to produce. As [described](#) by the D.C. Circuit: “disclosure of information can only be compelled by authority of Congress, its committees or subcommittees, not solely by individual members Election to the Congress does not give an individual subpoena power over whatever information he may happen to be interested in.”

Whether the difficulties that Members have experienced in enforcing other oversight rights may also be apparent in field investigations may be answered by the [pending litigation](#) brought by individual Members of Congress who were denied access to ICE facilities. [That case](#) includes the added complexity that it is at least partly founded on the appropriations provision discussed above, which is phrased as a prohibition on the use of funds rather than an explicit grant of authority to individual Members. One federal district court has [stated](#) that, as a result of the provision, Members are “statutorily authorized to enter and inspect” covered facilities “to conduct oversight.”

Even with its greater authority, a committee acting pursuant to an authorized investigation may still have some difficulty enforcing a request for access to government property because the typical enforcement tools may not be available in that context. The subpoena is a committee’s traditional means of compulsion, but subpoenas generally only come in [two forms](#): subpoenas *ad testificandum*, or demands for testimony, and subpoenas *duces tecum*, or demands for records or other evidence. While congressional committees have attempted to use subpoenas in a variety of ways—for example, to prevent the removal of [life support](#) or to compel a witness to [sign a document](#) that would provide the Congress with access to an overseas bank account—it is not clear how a subpoena could be used to gain physical access to a site. Securing such access, therefore, may require the use of other forms of legislative leverage or litigating any constitutional power or statutory right in court.

Informal Member Fact-Finding and the Speech or Debate Clause

While it is generally recognized that conducting oversight of executive branch activities is one of the official responsibilities of a Member of Congress as described above, judicial decisions interpreting the legal protections that the [Speech or Debate Clause](#) (Clause) affords Members in exercising that oversight responsibility have injected some confusion into this area of law.

[The Clause](#) largely immunizes Members from criminal and civil liability predicated on their “legislative acts.” The types of actions that the Clause protects go well beyond formal “Speech or Debate” in the halls of Congress to [include](#) any action that is an “integral part of the deliberative and communicative processes” through which Congress implements “matters which the Constitution places within the jurisdiction of either House.”

The Supreme Court has held that investigative and [oversight actions](#) sanctioned by either the House or Senate or a congressional committee are the type of activities that receive the protections of the Clause. As a result, courts have interpreted actions taken by individual Members in the course of an authorized

congressional investigation (for example at hearings, in issuing subpoenas, or pursuing contempt) as protected “legislative acts.”

Some courts have been less receptive to interpreting the Clause to protect [informal investigative and oversight actions](#) undertaken by individual Members outside of authorized committee investigations. While these interactions are [generally viewed](#) as “official” and “legitimate,” they have not always been viewed as “legislative” for purposes of the Clause. The Supreme Court has [said](#) that efforts to influence how the executive branch implements or administers the laws enacted by Congress (a common and legitimate oversight activity) are not “integral” to the legislative function and not protected by the Clause, at least when conducted “informally” by an individual Member. As [stated](#) by the Supreme Court: “Members of Congress are constantly in touch with the Executive Branch of the Government and with administrative agencies—they may cajole, and exhort with respect to the administration of a federal statute—but such conduct, though generally done, is not protected legislative activity.”

There is also some disagreement among the courts as to whether a Member’s efforts to gather information from an agency necessary to assist in their legislative duties (as opposed to seeking to influence agency conduct) is protected legislative activity. Some courts do not view informal actions by individual Members as “integral to the legislative process” for purposes of the Clause. The U.S. Court of Appeals for the Tenth Circuit, for example, has [held](#) that “informal information gathering—either personally by a member of Congress or by congressional aides”—is not protected legislative activity. That court, however, [acknowledged](#) that information gathering “is a proper congressional function and, when conducted by a committee, should be treated just as voting and debating legislation.”

That said, most courts have held that this type of informal fact-finding is a protected legislative act, [regardless](#) of whether that fact-finding is undertaken as part of an authorized committee investigation. The D.C. Circuit, for example, has [articulated](#) that “the acquisition of knowledge through informal sources is a necessary concomitant of legislative conduct and thus should be within the ambit of [the Clause’s] privilege so that congressmen are able to discharge their constitutional duties properly.” In another case, *United States v. Biaggi*, the U.S. Court of Appeals for the Second Circuit [held](#) that “legislative factfinding activity conducted” by an individual Member during a trip “to inspect and visit” state agencies in Florida in preparation for a congressional hearing was protected legislative activity. This recognition of the importance of legislative fact-finding by individual Members is consistent with the position generally taken by Members that, as constitutionally elected officers of the legislative branch, they may engage in oversight and investigations and are entitled to access necessary information.

Similarly, in *McSurely*, the D.C. Circuit recognized Member and staff “field work” and “field investigations” as protected legislative activities. At the same time, the court also [clarified](#) that “a Member of Congress or congressional employee is not free to use every conceivable means to obtain investigatory materials without fear of criminal prosecution or civil suit.” In that case, a Senate committee staff member traveled to Kentucky to view, collect, and transport back to Washington, DC, information that allegedly had been unlawfully obtained from an individual by state authorities and was subject to a court order of confidentiality due to Fourth Amendment concerns. Though acknowledging the committee staffer was engaged in informal fact-finding, the court nevertheless [held](#) that “the employment of unlawful means to implement an otherwise proper legislative objective is simply not ‘essential to legislating’” and therefore was not protected by the Clause.

Most recently, in a federal criminal prosecution of a sitting Member of Congress, the Department of Justice acknowledged, and the federal district court [agreed](#), that the Member’s oversight and fact-finding inspection of a federal immigration facility was a protected legislative act. In that case, however, the court [found](#) that a physical altercation with law enforcement that took place “during a brief time frame before the oversight inspection began” was ultimately not a protected legislative act. That case remains ongoing.

While these cases are useful in understanding the scope of legislative power, especially absent cases dealing directly with individual Member oversight, the Clause acts primarily as a shield against intrusion by other branches into legislative acts: it is a protection; not a source of authority. For this reason, Speech or Debate Clause principles have played a significant role in recent executive branch efforts to either investigate or prosecute conduct that Members have described as information gathering—including the government’s attempt, as referenced above, to prosecute a Member for an altercation with law enforcement that occurred during an oversight visit to an ICE facility.

Whether informal fact-finding activity is entitled to Speech or Debate Clause protections does not dispositively determine whether such activity is within a Member’s authority. The fact that a certain activity may not qualify as *legislative* for purposes of the Clause does not necessarily mean that activity is unauthorized. The Court has made clear that some unprotected acts, though not deemed legislative, may still be within a Member’s official responsibilities. The reverse is also true: the fact that a certain activity is considered legislative does not mean that it is authorized. Unauthorized acts—even some criminal acts—can still be protected legislative acts under the Clause.

Conclusion

Oversight of the executive branch is an essential aspect of the legislative function. While Congress has provided many of the compulsory investigative tools that support its oversight efforts to committees, individual Members nevertheless appear to retain the ability to conduct their own investigations and gather their own information, including through field investigations and site visits. Still, there are significant distinctions between committee investigations and individual Member investigations. Members have limited means available to enforce their particular investigative requests and, under the Speech or Debate Clause, may not always receive immunity for their otherwise legitimate investigative actions.

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