



Fact Sheet: How Congress Can Strengthen Its Oversight Capacity

The Problem

Congress plays an essential role in overseeing the federal government and private industries — a role rooted in the Constitution. In recent decades, however, Congress’s capacity for effective oversight has been undermined by reduced staffing, executive branch obstruction, and investigations driven by partisan narratives rather than fact-based inquiry.

Diminished Staff Capacity

Congress faces significant staffing challenges that undermine its ability to oversee the expansive federal government.¹ While there have been modest increases in congressional staffing, these gains have been far outpaced by the growth of the executive branch.² High turnover among congressional staff compounds this issue. In 2021, House staff turnover reached its highest rate since LegiStorm began tracking such data in 2001.³ This turnover depletes Congress of institutional knowledge and expertise essential for thorough oversight.

Executive Overreach

Presidential administrations’ historical resistance to congressional oversight has grown more aggressive in recent decades. As POGO testified in 2021, the Justice Department’s Office of Legal Counsel (OLC) has employed broad legal theories to argue that many of Congress’s oversight tools are unconstitutional.⁴ That office has even set out the criteria for which congressional requests for information the executive branch will respond to.⁵ By asserting sweeping privileges to withhold documents and testimony, the OLC forces Congress into protracted litigation, often delaying investigations until they become moot.⁶

¹ *Modernization Cohort Listening Session: Meeting of the House Select Committee on the Modernization of Congress*, 117th Cong. 10 (March 25, 2021) (testimony of Liz Hempowicz, director of public policy, Project On Government Oversight), <https://docs.house.gov/meetings/MH/MH00/20210325/111404/HMTG-117-MH00-Bio-HempowiczL-20210325.pdf>.

² Hempowicz, *Modernization Cohort Listening Session*, [see note 1].

³ Keturah Hetrick, “Last year’s staff turnover was the House’s worst in decades, data shows,” LegiStorm, March 21, 2022, https://www.legistorm.com/pro_news/2907/last-years-staff-turnover-was-the-houses-worst-in-decades-data-shows.html?utm_source=twitter&utm_medium=social&utm_campaign=caught-our-eye.

⁴ *Article One: Strengthening Congressional Oversight Capacity: Hearing before the House Select Committee on the Modernization of Congress*, 117th Cong. 1 (November 5, 2021) (testimony of David Janovsky, senior policy analyst, The Constitution Project at the Project On Government Oversight), <https://docs.house.gov/meetings/MH/MH00/20211104/114200/HHRG-117-MH00-Wstate-JanovskyD-20211104.pdf>.

⁵ Authority of Individual Members of Congress to Conduct Oversight of the Executive Branch, 41 Op. O.L.C. ___ (2017), <https://www.justice.gov/olc/file/1085571/download>; Memorandum from Steven Engel, assistant attorney general, regarding Requests by Individual Members of Congress for Executive Branch Information, (February 13, 2019), <https://www.justice.gov/olc/file/1356251/dl>.

⁶ Todd Garvey, Congressional Research Service, *Congressional Subpoenas: Enforcing Executive Branch Compliance*, R454653 (March 27, 2019), 11, <https://crsreports.congress.gov/product/pdf/r/45653>.

Whistleblower Protection

Whistleblowers play a critical role enabling congressional oversight by uncovering misconduct and systemic failures. Some of the most impactful congressional investigations in history have been informed by whistleblowers. This partnership dates back to 1778, when the Continental Congress passed the first whistleblower protection law.⁷ Mishandling whistleblowers both endangers individuals and undermines public trust in investigations.

Polarization

In today's polarized political climate, bipartisanship in Congress has become increasingly difficult. However, bipartisan cooperation remains beneficial for oversight, and legislation resulting from investigations is more likely to succeed when it reflects broad consensus.

The Solutions

Rebuilding Capacity

To restore its capacity for oversight, Congress must invest in hiring and retaining qualified staff and providing ongoing training. Without these changes, Congress risks failing in its duty to serve as a check on the other branches of government.

Rebalancing Congressional Authority

To counteract the legal imbalance with the executive branch, Congress should establish its own Office of Legal Counsel to articulate and defend its legal positions independently. This congressional equivalent would enable Congress to push back against executive overreach and ensure its oversight efforts are not undermined by legal roadblocks. When oversight disputes require judicial resolution, Congress should establish a fast-track process so the executive branch cannot win by simply outlasting a congressional session.

Protecting Whistleblowers

To maximize the value of whistleblower contributions, Congress must establish secure channels for whistleblowers to share information and must emphasize protecting their anonymity. In 2019, the House established the nonpartisan Office of the Whistleblower Ombuds to educate staff on effectively working with whistleblowers.⁸ Creating a comparable Senate office would further enhance Congress's ability to leverage whistleblower insights.

Investigating with Integrity

Many of the most effective and credible congressional investigations had bipartisan support.⁹ When bipartisanship is not feasible, the majority party must conduct investigations transparently and fairly, focusing on legislative outcomes rather than partisan objectives. Investigations should be flexible enough to evolve based on emerging evidence. Committees must also clearly define the scope of their investigations and outline policy areas they aim to address. This minimizes bias, builds public trust, and ensures findings are directed toward meaningful reform.

Contact

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⁷ Stephen M. Kohn, "The Whistle-Blowers of 1777," *New York Times*, June 12, 2011, <https://www.nytimes.com/2011/06/13/opinion/13kohn.html>.

⁸ H.Res. 6, 116th Cong., § 104(e)(3) (2019), <https://www.congress.gov/bill/116th-congress/house-resolution/6/text/H65575DEBC9484515B32968B7AF3ADCF5>.

⁹ Tim Stretton, "Congressional Oversight Investigations Primer," Project On Government Oversight, January 17, 2023, <https://www.pogo.org/resources/congressional-oversight-investigations-primer>.