

THE WEAPONIZATION OF CONGRESSIONAL OVERSIGHT

THE POLITICS OF THE WATCHFUL EYE,
1947–2010

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During the 2006 election cycle, Democrats campaigned on the promise of returning managerial competence to Washington.¹ Congressional Republicans had been wracked by a series of ethics scandals, while the Bush administration had to deal with charges of maladministration in the handling of Hurricane Katrina's aftermath and the postwar reconstruction of Iraq. Democrats complained loudly that congressional Republicans, serving as handmaidens for the administration and leery of possible political fallout, turned a blind eye to the serious allegations of administrative failings. Not only was the one hundred and ninth Congress notable for its relative lack of legislative productivity, it paid scant attention to executive oversight.² House committees held only 960 hearings during the two year session—200 less than Democrats held during unified government under President Bill Clinton between 1993 and 1994. Senate Democrats, frustrated with Republican unwillingness to examine seriously the Bush Administration's policy in Iraq, resorted to holding their own hearings on prewar intelligence (Pincus 2006). Democrats campaigned throughout the summer and fall on the promise to exercise increased oversight of the executive branch, with Minority Leader Nancy Pelosi notably pledging to “drain the Republican swamp” if voters threw out Republicans and gave them the majority (Espo 2006). Voters threw Republicans out, and the Democratic majority made good on their promise: At the conclusion of the one hundred and tenth Congress, the House conducted more than 1,400 hearings. Congressman Henry Waxman (D-CA), the new chair of the House Committee on Oversight and Government Reform, alone held 203 hearings during the last two years of the Bush administration (Sherman and Cohen 2010).

Fast forward four years. Congressional Republicans focused their campaign for the majority on policy-oriented complaints, most notably the economic stimulus plan and the Obama administration's health-care reform. Republicans charged that the stimulus plan did not noticeably improve the nation's economy, and that the Affordable Health Care Act represented an unprecedented grab of federal power intruding into the private lives of Americans. What was relatively absent was a call for increased oversight of the executive branch. Republicans managed in an historic election to recapture their lost House majority. Given the relative lack of attention to oversight, Representative Darrell Issa (R-CA)—the incoming House Oversight and Government Reform Committee Chairman—made an interesting pledge after the election. He promised to launch more investigations than his predecessor, Henry Waxman, saying he would like to hold seven hearings a week—a goal of more than double the number of hearings (Sherman and Cohen 2010). The Chairman's investigation into an alleged cover-up involving a high-profile Bureau of Alcohol, Tobacco, and Firearms (ATF) scandal and the subsequent refusal by the Obama administration to turn over subpoenaed Justice Department documents led to an unprecedented House floor vote holding Attorney General Eric Holder in civil and criminal contempt, a first for a sitting cabinet official. Only 17 Democrats joined nearly all House Republicans in voting to hold Attorney General Holder in contempt of Congress (Weisman and Savage 2012). Issa's aggressive oversight was critical in the pursuit of Holder and the pinnacle of a series of investigations he held to root out allegations of waste, fraud, and abuse in the executive branch.

"If any realm exists in which [Congress] can be autonomous and consequential," writes one of the foremost experts on Congress, "it is in the realm of investigation" (Mayhew 2000, 89). Committee hearings and investigations are perhaps the most important tool Congress has to check the authority of the executive branch, and both parties have claimed that the other—when serving in the majority—failed to exercise this critical responsibility. Implicit in the argument is that the lack of oversight is related to political considerations: Congressional majorities did not want to embarrass friendly administrations in unified government for fear of hurting the party brand. Although the claim has been made before by some political scientists that investigations are inviting tools for political combat (Ginsberg and Shefter 2004), until recently, the notion that investigations are launched or not because of partisan considerations has met with resistance by the discipline (Mayhew 1991; 2005). Oversight and its vigorous exercise are discussed in terms of constitutional responsibilities, the pursuit of "good" and efficient government, and the incentives faced by individual members of Congress. We contend that the when, how, and why of congressional oversight is little understood by congressional scholars. In this chapter, we discuss the purpose of congressional investigation, some of the reasons advanced by political scientists explaining why Congress investigates and oversees administrations, and finally, shed light on an increasingly apparent development in the politics of congressional oversight: the "weaponization" of congressional investigations. To