

TRACKING OVERSIGHT IN THE HOUSE IN THE 116TH CONGRESS

MOLLY E. REYNOLDS[†] & JACKSON GODE[‡]

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I. INTRODUCTION

After picking up forty-two seats in the 2018 midterm elections, Democrats took control of the House of Representatives in January 2019 for the first time since 2010;¹ the party had not had a majority in either chamber since Republicans gained control of the Senate after the 2014 midterms.² With Republicans maintaining their advantage in the Senate and a Republican president in the White House, however, the prospects for meaningful legislation under divided government appeared slim.³

[†] Senior Fellow, The Brookings Institution; B.A., 2006, *magna cum laude*, Smith College; M.A., 2012, University of Michigan; Ph.D., 2015, University of Michigan.

[‡] Research Analyst, The Brookings Institution; B.A., 2018, *magna cum laude*, The George Washington University.

1. See Khorri Atkinson, *Democrats won the House with the largest midterms margin of all time*, AXIOS (Nov. 27, 2018), <https://www.axios.com/2018-midterm-elections-democrats-won-house-biggest-margin-a56a1049-8823-4667-8d81-2c67ef3f36f4.html> [<https://web.archive.org/web/20200604202605/https://www.axios.com/2018-midterm-elections-democrats-won-house-biggest-margin-a56a1049-8823-4667-8d81-2c67ef3f36f4.html>]; see also Rory Appleton, *How did TJ Cox erase a 25-point primary loss to become the Valley’s next congressman?*, FRESNO BEE (Dec. 12, 2018, 8:50 AM), <https://www.fresnobee.com/news/politics-government/politics-columns-blogs/political-notebook/article222436900.html> [<https://web.archive.org/web/20200601230330/https://www.fresnobee.com/news/politics-government/politics-columns-blogs/political-notebook/article222436900.html>].

2. *Id.*

3. See Mark Z. Barabak & Lisa Mascaro, *Republicans hold the House and Senate, but will that end the Washington gridlock even with President Trump?*, L.A. TIMES (Nov. 9, 2016, 12:10 AM), <https://www.latimes.com/politics/la-na-pol-election-congress-control-20161108-story.html> [<https://web.archive.org/web/20200606221038/https://www.latimes.com/politics/la-na-pol-election-congress-control-20161108-story.html>].

Reporting during the campaign, moreover, suggested that investigations of President Trump and the actions of his administration were likely to be a significant focus of Democrats' efforts in the House.⁴ Headlines indicating that certain Democrats "could make Trump's life miserable if they win the House in the midterms" and that Republicans were "secretly studying their coming hell" were commonplace during the campaign.⁵ In the months before and immediately after the 2018 election, for example, the *New York Times* ran eleven front-page stories that discussed the implications of a Democratic victory for congressional oversight of the executive branch.⁶

Scholarly work on congressional oversight supports the notion that divided party control—meaning one party has a majority in at least one chamber of Congress while the other holds the White House—is likely to produce higher levels of congressional oversight. In their analysis of congressional investigations between 1898 and 2014, for example, Douglas Kriner and Eric Schickler found that House committees scrutinize executive behavior more aggressively when at least one chamber of Congress is controlled by one party and the presidency is occupied by the other.⁷ Research on congressional investigations of "executive misbehavior"—"questions and controversies about

4. See Tucker Higgins, *A midterm victory would unleash congressional Democrats who are eager to investigate Trump*, CNBC (Aug. 4, 2018, 4:52 PM), <https://www.cnbc.com/2018/08/04/midterm-victory-would-unleash-democrats-to-investigate-trump.html> [<https://web.archive.org/web/20191222220439/https://www.cnbc.com/2018/08/04/midterm-victory-would-unleash-democrats-to-investigate-trump.html>].

5. Nicole Gaudiano, *These Democrats could make Trump's life miserable if they win the House in the midterms*, USA TODAY (Nov. 4, 2018), <https://www.usatoday.com/story/news/politics/elections/2018/11/04/2018-midterm-elections-democrats-donald-trump/1851978002/> [<http://web.archive.org/web/20200404165339/https://www.usatoday.com/story/news/politics/elections/2018/11/04/2018-midterm-elections-democrats-donald-trump/1851978002/>]; Jonathan Swan, *Scoop: Republicans secretly study their coming hell*, AXIOS (Aug. 26, 2018), <https://www.axios.com/2018-midterm-elections-republicans-preparation-investigations-180abf7b-0de8-4670-ae8a-2e6da123c584.html> [<http://web.archive.org/web/20200404165611/https://www.axios.com/2018-midterm-elections-republicans-preparation-investigations-180abf7b-0de8-4670-ae8a-2e6da123c584.html>].

6. Our search strategy for identifying these stories builds on one used by Frances E. Lee. See Frances E. Lee, *Presidents and Party Teams: The Politics of Debt Limits and Executive Oversight, 2001-2013*, 43 PRESIDENTIAL STUD. Q. 775–91 (2013). We searched the Nexis database for all front-page *New York Times* stories containing the following: Congress AND President AND (oversight OR investig*) AND midterm*. Each story identified was then read to ensure it discussed our topic of interest.

7. DOUGLAS L. KRINER & ERIC SCHICKLER, INVESTIGATING THE PRESIDENT: CONGRESSIONAL CHECKS ON PRESIDENTIAL POWER (2016).

presidential or executive branch performance . . . [that] transcend ideology”—also demonstrates that such inquiries are more common (as measured by press reports) under divided government.⁸ Yet, other work that explores variation in oversight activity across committees demonstrates that panels undertake more oversight when they are ideologically different from the agencies they are investigating—an arrangement we would expect to see after a switch in party control in the House.⁹

While this literature suggests that an increase in executive branch oversight by House committees was likely after the 2018 elections, other research raises questions about whether committee members would choose to conduct oversight and, even if they did, whether that oversight would be effective. An examination of the issues discussed most frequently in political advertisements during the 2018 cycle, for example, indicates that the election was not ultimately about the conduct of President Trump or his administration.¹⁰ Between Labor Day and Election Day, more than forty percent of all advertisements aired in federal and gubernatorial races were about health care.¹¹ For both parties, moreover, the top five topics covered by advertisements for federal candidates during the period were substantive issues.¹² Pro-Democratic advertisements more frequently covered healthcare, taxes, Medicare, and campaign finance, while pro-Republican advertisements focused on taxes, healthcare, immigration, budget, and jobs.¹³ Another analysis of advertising data found that advertisements for House and Senate candidates in 2018 mentioned President Trump *less* frequently than advertisements during other recent midterm elections.¹⁴ Between September 18 and October 15, 2018, roughly ten percent of advertisements in congressional races mentioned President Trump, with

8. Lee, *supra* note 6, at 786.

9. Robert J. McGrath, *Congressional Oversight Hearings and Policy Control*, 38 LEGIS. STUD. Q. 349, 354 (2013).

10. See Erika Franklin Fowler et al., *The Big Lessons of Political Advertising in 2018*, THE CONVERSATION (Dec. 3, 2018, 6:34 AM), <https://theconversation.com/the-big-lessons-of-political-advertising-in-2018-107673> [<http://web.archive.org/web/20200404172019/https://theconversation.com/the-big-lessons-of-political-advertising-in-2018-107673>].

11. *Id.*

12. *Id.*

13. *Id.*

14. See, e.g., Wesleyan Media Project, *2018: The Health Care Election*, WESLEYAN MEDIA PROJECT (Oct. 18, 2018), <http://mediaproject.wesleyan.edu/101818-tv/> [<http://web.archive.org/web/20200404172610/http://mediaproject.wesleyan.edu/101818-tv/>].

positive and negative references being roughly equal.¹⁵ In 2006, 2010, and 2014, however, more advertisements that aired during the same window of time surrounding the elections mentioned the President, and nearly all of them were negative.¹⁶ In 2014, for example, more than twenty percent of advertisements mentioned President Obama in a negative light.¹⁷ The fact, then, that neither President Trump nor the conduct of his administration was a major of focus of one type of candidate activity in 2018—advertising—suggests that Democrats might not have had the reason to turn to oversight in 2019 that the academic literature discussed above would suggest.

In addition, other research outlines how, if Democrats pursued oversight aggressively at the beginning of January 2019, the oversight's effectiveness would likely have depended on their approach. Work by Joshua D. Clinton, David E. Lewis, and Jennifer L. Selin, relying on the perceptions and opinions of agency officials on the consequences of congressional oversight, found that the more congressional committees were involved in the oversight of an agency, the less influence the legislature actually had.¹⁸ Indeed, reporting suggests that for some of the highest-profile issues, multiple House committees wanted to investigate the same allegations against the President and his administration after the switch to Democratic control.¹⁹ Evaluating whether there are consequences of this kind of competition in the current Congress, however, requires a comprehensive picture of House oversight activity.

Given the questions raised by both the academic literature and the discussion of oversight in the 2018 midterm elections, we elected to undertake a significant data collection effort aimed at measuring House oversight of the executive branch during the 116th Congress. The project, known as the Brookings House Oversight Tracker (“Tracker”),²⁰

15.*Id.*

16.*Id.*

17.*Id.*

18. See generally Joshua D. Clinton et al., *Influencing the Bureaucracy: The Irony of Congressional Oversight*, 58 AM. J. OF POL. SCI. 387–401 (2014).

19. Rachel Bade & Karoun Demirjian, *House Democrats Seek to Quell Turf War on Eve of Explosive Cohen Hearing*, WASH. POST (Feb. 26, 2019), https://www.washingtonpost.com/politics/house-democrats-seek-to-quell-turf-war-on-eve-of-explosive-cohen-hearing/2019/02/26/329666a0-39f2-11e9-b786-d6abcbed212a_story.html [http://web.archive.org/web/20200404173458/https://www.washingtonpost.com/politics/house-democrats-seek-to-quell-turf-war-on-eve-of-explosive-cohen-hearing/2019/02/26/329666a0-39f2-11e9-b786-d6abcbed212a_story.html].

20. Molly E. Reynolds & Jackson Gode, *Tracking House Oversight in the Trump Era*, BROOKINGS INST., <https://www.brookings.edu/interactives/tracking-house-oversight-in-the-trump-era/>

is meant for two main audiences: academics interested in studying patterns of oversight behavior in the House and the broader public, including journalists, who may find a single repository of information about congressional investigations more useful than relying on a range of media reports and congressional web sources.

This paper will outline the Tracker, describing what activity it includes and excludes, the definition of “oversight” that guides data collection, and the process by which data is gathered—including a discussion of which components are automated.²¹ In addition, we will discuss the principal findings about House oversight in the first session of the 116th Congress, including the levels of activity, the distribution of activity across issue areas, the quality of the activity we observe, and a test of whether oversight in 2019 was consistent with some patterns found in academic work on congressional investigations.²² We conclude by considering the strengths and weaknesses of the data contained in the Tracker for research purposes.²³

II. THE BASICS OF THE HOUSE OVERSIGHT TRACKER²⁴

The Brookings House Oversight Tracker contains information on two kinds of oversight behavior engaged in by committees in the House of Representatives in the 116th Congress: (1) hearings and (2) letters sent to executive branch officials or others with knowledge of White House or executive branch operations.²⁵ While hearings are the committee output most conventionally associated with oversight, letters represent an important tool that committees use to request appearances by witnesses at hearings as well as to obtain documents or answers to questions about agency behavior.²⁶ To identify hearings, we use the hearings calendar

[<http://web.archive.org/web/20200404173905/https://www.brookings.edu/interactives/tracking-house-oversight-in-the-trump-era/>] (last visited Apr. 2, 2020).

21. See *infra* Part II.

22. See *infra* Part III.

23. See *infra* Part IV.

24. This discussion draws heavily on our methodology statement made available as part of the Tracker. See Molly E. Reynolds & Jackson Gode, *Tracking House Oversight in the Trump Era: Methodology*, BROOKINGS INST. (2020), https://www.brookings.edu/wp-content/uploads/2019/03/gs_20190321_tracking_oversight_trump_era_methodology.pdf [http://web.archive.org/web/20200404174511/https://www.brookings.edu/wp-content/uploads/2019/03/gs_20190321_tracking_oversight_trump_era_methodology.pdf] [hereinafter *Methodology Statement*] (last visited Apr. 2, 2020).

25. See *id.*

26. See Rachel Augustine Potter, *Member comments: The other (less visible) way Congress oversees rulemaking*, BROOKINGS INST. (Nov. 21, 2019),

available as part of the House of Representatives Committee Repository to obtain information on all hearings held in the House.²⁷ For letters, we assembled a list of the web pages on which House committees post press releases and, in some cases, a specific list of letters the panel has sent.²⁸ While committees are not required to make the sent letters public, we aim to capture all of the publicly available letters used by committees and subcommittees for oversight.²⁹

In addition, we restrict our data collection to letters sent on behalf of committees or subcommittees and signed by the chair of the relevant committee or subcommittee.³⁰ We do not, however, include letters sent by members of the minority party only; a clear explanation of the justification for this choice comes from oversight expert Morton Rosenberg:

[N]o ranking minority members or individual members can start official committee investigations, hold hearings, issue subpoenas, or attend informal briefings or interviews held prior to the institution of a formal investigation . . . Individual members may also seek the voluntary cooperation of agency officials or private persons. But no judicial precedent has recognized a right of an individual member, other than the chair

<https://www.brookings.edu/research/member-comments-the-other-less-visible-way-congress-oversees-rulemaking/>

[<https://web.archive.org/web/20191206204018/https://www.brookings.edu/research/member-comments-the-other-less-visible-way-congress-oversees-rulemaking/>].

27. See *Committees*, U.S. HOUSE OF REPRESENTATIVES COMM. REPOSITORY, <https://docs.house.gov/Committee/Committees.aspx> (providing drop-down list of committees)

[<http://web.archive.org/web/20200404175525/https://docs.house.gov/Committee/Committees.aspx>] (providing a drop-down list of committees).

28. Markups of pending legislation, which focus primarily on developing bills for consideration and not on overseeing executive branch conduct, were not included in this analysis.

29. *Methodology Statement*, *supra* note 24.

30. Letters that appeared on committee websites and signed by House General Counsel employees were also included in data collection. Only two letters sent during the 116th Congress were sent by House General Counsel employees and both were excluded from this analysis since they were sent in 2020. See, e.g., Letter from Douglas N. Letter, Gen. Counsel, Subcomm. on the Judiciary, to Mark Langer, Clerk of Court, U.S. Court of Appeals for the D.C. Circuit (Jan. 28, 2020), https://judiciary.house.gov/uploadedfiles/6e_28j_letter_1.28.20.pdf [http://web.archive.org/web/20200404180553/https://judiciary.house.gov/uploadedfiles/6e_28j_letter_1.28.20.pdf].

of a committee, to exercise the authority of a committee in the oversight context.³¹

Certain components of this data collection process are automated, while others are carried out by a team of researchers. Specifically, information on committee hearings—including the date, time, and title of the hearing, a link to the web announcement, the identities and affiliations of the witnesses, and the committee or subcommittee conducting the hearing—is obtained using a web scraper and written using the Google Sheets add-on, Automate, which collects the relevant data once each week. Data on letters, meanwhile, is collected by a research team that visits the web pages referenced above. For each letter, the research team records the date, web title of the corresponding press release, link to a copy of the document, recipient title and affiliation, associated committees or subcommittees, and signatories.

With information about all hearings and publicly available letters collected, we next built a definition of oversight that could be applied to each type of committee activity. Relying on both academic literature and discussions with oversight practitioners, we developed a two-tiered “key word and key witness/recipient” approach to identifying oversight activity based on the title of the hearing or letter and its witnesses or recipients.³² Primary key words include “oversight,” “investigate,” “examine,” “review,” “supervision,” “inefficiency/efficiency,” “abuse,” “transparency,” “accountability,” “waste,” “fraud,” “abuse,” “mismanagement,” and “implementation,” as well as variants of these words.³³ Primary witnesses or letter recipients included Government Accountability Office officials and officials in Inspector General Offices.³⁴

If a primary key word or witness/recipient appears, an additional set of conditions must be satisfied. First, the federal government must be the

31. MORTON ROSENBERG, *WHEN CONGRESS COMES CALLING: A STUDY ON THE PRINCIPLES, PRACTICES, AND PRAGMATICS OF LEGISLATIVE INQUIRY* 95 (2017), <https://archive.constitutionproject.org/wp-content/uploads/2017/05/WhenCongressComesCalling.pdf> [<http://web.archive.org/web/20200404180640/https://archive.constitutionproject.org/wp-content/uploads/2017/05/WhenCongressComesCalling.pdf>].

32. See, e.g., Brian D. Feinstein, *Who Conducts Oversight? Bill-Writers, Lifers, and Nailbiters*, 64 WAYNE L. REV. 127–48 (2019); Carl Levin & Elise J. Bean, *Defining Congressional Oversight and Measuring its Effectiveness*, 64 WAYNE L. REV. 2–22 (2019); Kriner & Schickler, *supra* note 7, at 68–70; McGrath, *supra* note 9, at 357–62. We also benefitted from conversations with Dan Diller and others at the Lugar Center.

33. If a hearing involved an agency budget review, we did not consider it to be oversight. See *Methodology Statement*, *supra* note 25.

34. *Id.*

object of the oversight hearing or correspondence.³⁵ Second, the hearing or letter must not involve either oversight of a state government or agency; it also must not involve a legislative proposal or program reauthorization.³⁶ Finally, the “activity being investigated must have occurred since November 8, 2016[,] and be related to executive branch actions, [rather than] campaign activity.”³⁷

We also identified a list of secondary key words and witness/recipients. These terms may indicate that a hearing or letter involves oversight; however, they are treated more carefully.³⁸ Hearings and letters must include oversight of specific policy programs, directives, or actions, as well as one of the following secondary key words: “update,” “effects,” “preparation,” “improve,” and agency “actions.”³⁹ Secondary witnesses and letter recipients include current and former heads of agencies or agency subunits, individuals affected by program mismanagement, and individuals or organizations with knowledge of White House or executive branch operations.⁴⁰

To ensure the rigorous application of this definition of oversight, each hearing or letter is coded by two independent coders.⁴¹ For hearings or letters where the coders disagree in their assessments, the coders discuss their different perspectives, and, if the disagreement can’t be resolved, a third coder is enlisted to decide whether the activity meets our definition of oversight.⁴²

III. OVERVIEW OF HOUSE OVERSIGHT IN 2019, THE FIRST SESSION OF THE 116TH CONGRESS

In 2019, during the first session of the 116th Congress, House committees held 261 oversight hearings and sent 541 letters that were coded as oversight activity in the Brookings House Oversight Tracker.⁴³ As a share of overall House hearing activity, oversight hearings represented a relatively small proportion, with only twenty-one percent of all hearings falling into this category.⁴⁴ Figure 1 displays this pattern

35. *Id.* (“For example, ‘Oversight of Facebook, Google, and Twitter Data Privacy,’ [despite including] a key word, would not be [considered] executive branch oversight.”).

36. *Id.*

37. *Id.*

38. *See id.*

39. *Id.*

40. *Id.*

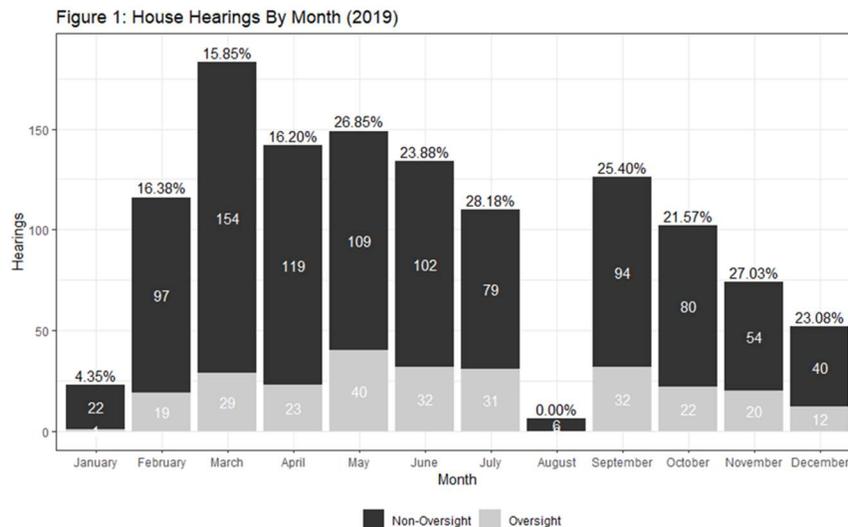
41. *Id.*

42. *Id.*

43. *See infra* Figures 1, 2.

44. *See infra* Figure 1.

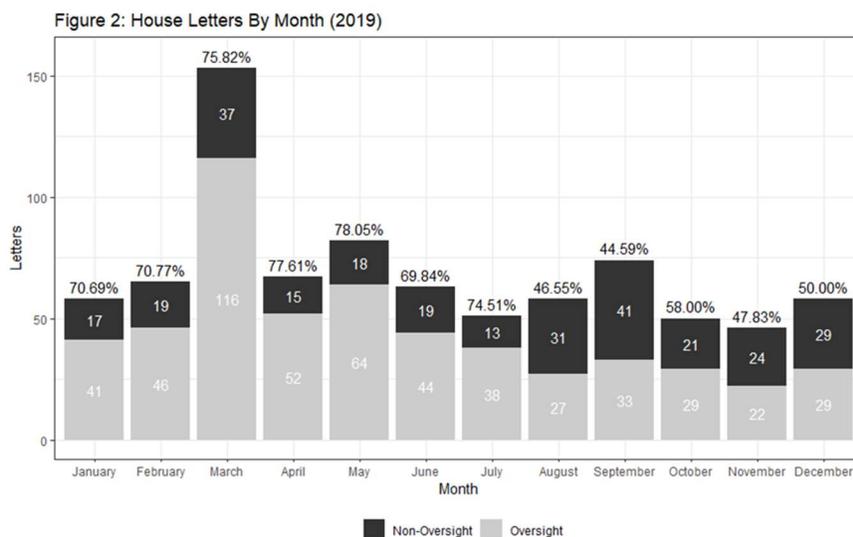
visually by month, depicting the share of House full committee and subcommittee hearings that were oversight. Not considering January, when committees were largely still organizing themselves in Congress, and August, when the House was on recess, oversight hearings constituted approximately fifteen to thirty percent of total hearing activity each month.⁴⁵



Letters sent by House committees, meanwhile, generally did involve oversight of the executive branch. Overall, sixty-six percent of all committee correspondence was intended to conduct executive

45. Most January hearings were organizational in nature as committees agreed to internal rules for the 116th Congress. *See, e.g., Committee Schedule*, CONGRESS, <https://www.congress.gov/committee-schedule/weekly/2019/01/07?searchResultViewType=compact&KWICView=false> [<http://web.archive.org/web/20200404182329/https://www.congress.gov/committee-schedule/weekly/2019/01/07?searchResultViewType=compact&KWICView=false>] (last visited Apr. 2, 2020) (listing “House Committee on Rules” as the only meeting scheduled for the week of January 7, 2020). All August hearings were field hearings that took place outside of Washington, D.C. *See, e.g., Examining the Homeless Crisis in Los Angeles*, CONGRESS <https://www.congress.gov/event/116th-congress/house-event/109880?s=2&r=1> [<https://web.archive.org/web/20200405154106/https://www.congress.gov/event/116th-congress/house-event/109880?s=2&r=1>] (last visited Apr. 2, 2020) (congressional calendar showing House field hearing on August 14, 2019). Field hearings were coded separately and excluded from the definition of executive oversight used in this analysis. *See infra* Figure 1.

oversight.⁴⁶ Figure 2 shows the monthly distribution of oversight letters as a percentage of total committee correspondence.⁴⁷ The ratio of oversight letters to non-oversight letters makes clear that the House saw correspondence as a vital tool in its attempts to obtain information from the executive branch.⁴⁸



There is also notable variation in the topics covered by the oversight activity of House committees. As seen in Figure 3, the most common areas of focus for letters were executive actions related to “Criminal Justice and Rule of Law” and “Government Operations and Ethics” issues.⁴⁹ Within these categories, a large portion of these letters were related to newsworthy topics such as the investigation by Special Counsel Robert Mueller (seventeen letters), the impeachment inquiry (eighteen letters), and the White House ethics pledge waiver process

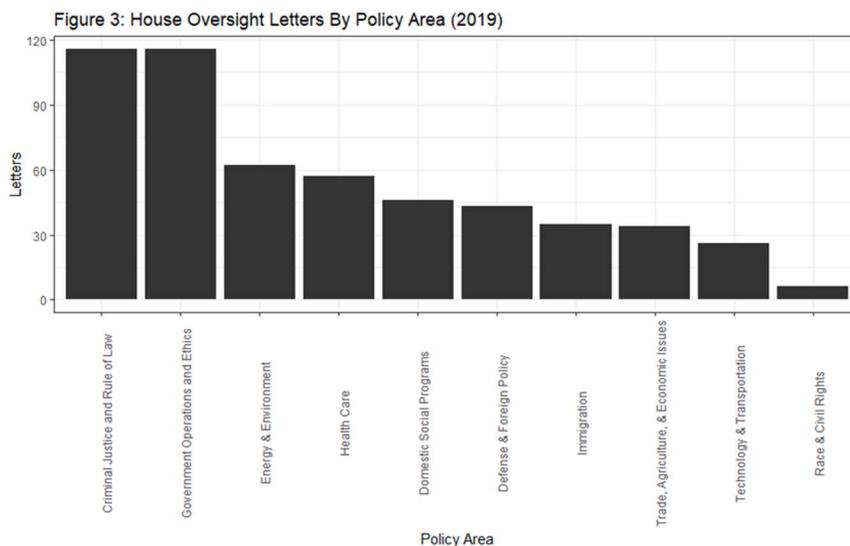
46. See *infra* Figure 2.

47. On March 4, 2019, the House Judiciary Committee sent eighty-one letters as part of its announcement unveiling an “Investigation into Threats Against the Rule of Law.” *House Judiciary Committee Unveils Investigation into Threats Against the Rule of Law*, U.S. HOUSE OF REPRESENTATIVES (Mar. 4, 2019), <https://judiciary.house.gov/news/documentsingle.aspx?DocumentID=1502> [<http://web.archive.org/web/20200404184152/https://judiciary.house.gov/news/documentsingle.aspx?DocumentID=1502>] (press release). This single, coordinated set of letters is largely responsible for a significantly higher number of letters sent that month.

48. See *infra* Figure 2.

49. See *infra* Figure 3.

(twenty-six letters).⁵⁰ In addition, committees generally targeted multiple administration officials and other individuals with knowledge of administration activities.⁵¹ As one might expect, the committees that were most likely to investigate these topics using letters were the House Judiciary and Oversight and Reform Committees.⁵²



In Figure 4, meanwhile, we see that the policy areas most frequently targeted by oversight hearings in the House were different than those on which letters focused as they generally did not involve the personal conduct of Trump administration officials.⁵³ The top three policy areas covered in oversight hearings were “Trade, Agriculture, & Economic Issues,” “Energy & Environment,” and “Defense & Foreign Policy.”⁵⁴ Given the relatively broad scope of each of these three categories, it does not seem that any committees or subcommittees served as the primary location of this activity.⁵⁵

50. See *Methodology Statement*, *supra* note 25.

51. *Id.*

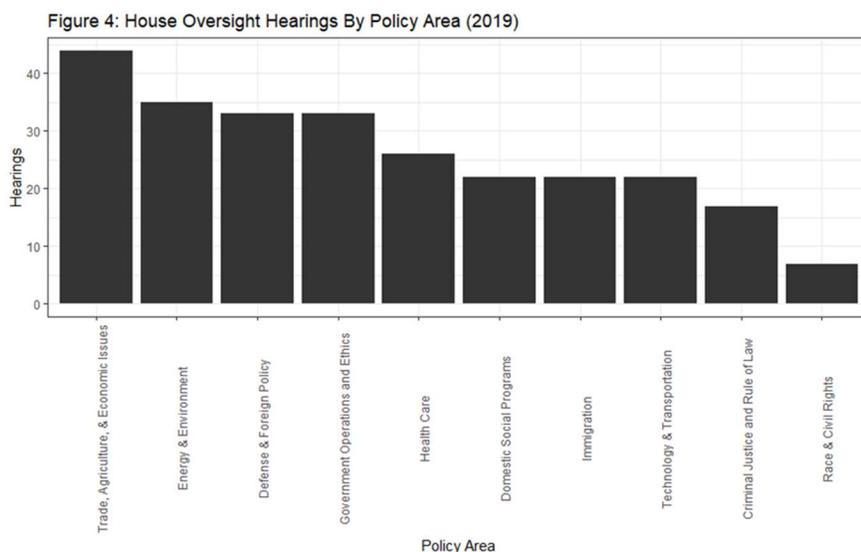
52. *Id.*

53. See *infra* Figure 4.

54. Major investigations in the “Trade, Agriculture, & Economic Issues” policy area included the federal response to major hurricanes and other natural disasters, the trade war with and Russian sanctions relief, and general oversight of agencies such as the Small Business Administration and the Consumer Financial Protection Bureau.

55. See *infra* Figure 4.

In addition, it is certainly possible that House committees would have spent more time hearing testimony from witnesses on topics related to “Criminal Justice and Rule of Law” and “Government Operations and Ethics”—and to allegations of misconduct by individuals generally—if administration officials had been more willing to cooperate with congressional inquiries.⁵⁶ President Trump’s proclamation that his administration would fight “all the subpoenas” and would generally not accommodate congressional requests for information likely reduced the number of hearings focused on those issues.⁵⁷ Unlike letters, hearings are not effective unless witnesses agree to appear.⁵⁸



While observing the frequency with which House committees examined different issues provides an overall sense of the focus of Congress’s oversight, doing so tells us little about the *quality* of that oversight. In their analysis of congressional oversight, Senator Carl Levin and Elise J. Bean argued that one measure of oversight quality is the degree to which the oversight focuses on topics that are important to

56. Charlie Savage, *Trump Vows Stonewall of ‘All’ House Subpoenas, Setting Up Fight Over Powers*, N.Y. TIMES (Apr. 24, 2019), <https://www.nytimes.com/2019/04/24/us/politics/donald-trump-subpoenas.html> [<http://web.archive.org/web/20200404184934/https://www.nytimes.com/2019/04/24/us/politics/donald-trump-subpoenas.html>].

57. *Id.*

58. *Id.*

the public.⁵⁹ Gallup regularly asks Americans what they “think is the most important problem facing this country today.”⁶⁰ By matching Tracker data on policy topics to Gallup survey results, we can identify whether issues of public importance are prioritized for oversight by members of Congress.⁶¹ In Figure 5, we see that while nearly seventeen percent of Americans viewed “Trade, Agriculture, & Economic Issues” as the most important problem facing the country, only 9.7 percent of House oversight activity prioritized the topic.⁶² In contrast, “Criminal Justice and Rule of Law” (16.6 percent of oversight actions) and “Energy & Environment” (12.1 percent of oversight actions) were major oversight targets for lawmakers, even though these topics held low public importance (5.8 percent and 2.9 percent, respectively).⁶³ This pattern suggests that, at least in the 116th Congress, the House Democrats’ pursuit of certain oversight topics was motivated in part by factors beyond what Americans prioritized as the most important issues facing the country.⁶⁴

59. See Levin & Bean, *supra* note 32, at 18–19.

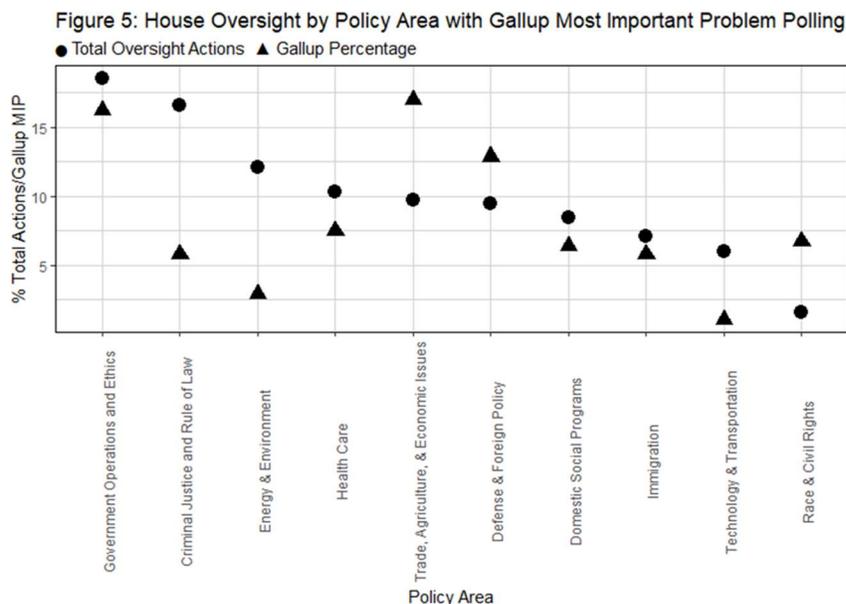
60. Data on Gallup’s “Most Important Problem” is collected and coded by the Policy Agendas Project. See POLICY AGENDAS PROJECT, GALLUP’S MOST IMPORTANT PROBLEM DATA CODEBOOK (2015), https://comparativeagendas.s3.amazonaws.com/codebookfiles/Gallups_Most_Important_Problem_Codebook.pdf [http://web.archive.org/web/20200404190348/https://comparativeagendas.s3.amazonaws.com/codebookfiles/Gallups_Most_Important_Problem_Codebook.pdf] (last visited Apr. 2, 2020). For our analysis, we used the data from 2017.

61. See *infra* Figure 5.

62. See *infra* Figure 5.

63. See *infra* Figure 5.

64. See *infra* Figure 5.



In addition to discussing the quality of congressional oversight, Levin and Bean also discussed the range of oversight mechanisms available to Congress.⁶⁵ Data from the Tracker can also shed light on how these tools were used in the first session of the 116th Congress. In particular, we can see that, as Levin and Bean argued, congressional oversight investigations often involve the work of congressional support agencies, including the Congressional Research Service (“CRS”), the Government Accountability Office (“GAO”), and agency Inspectors General.⁶⁶ Indeed, during the first session of the 116th Congress, committees made significant use of the expertise of these seasoned investigators, especially through hearing testimony. In total, seventy-five oversight hearings heard testimony from witnesses from one of these agencies or offices.⁶⁷ In addition, fifty-two oversight letters were sent to CRS, GAO, and Inspectors General employees from House committees.⁶⁸ This represented 28.7 percent of all oversight hearings and 9.6 percent of oversight letters sent during the first session of the 116th Congress.⁶⁹

65. Levin & Bean, *supra* note 32, at 11–14.

66. *Id.* at 11.

67. See Reynolds & Gode, *supra* note 20.

68. *Id.*

69. *Id.*

Past research has also shown that committee chairs can play an important role in advancing the chamber's oversight agenda. Chairs are responsible for setting a committee's legislative agenda, hiring staff, and signing all letters sent on behalf of a committee.⁷⁰ Brian Feinstein found that from 2011 to 2015, House authorizing committee chairs were more likely to schedule oversight hearings if they were a senior member of the body or faced a more competitive electoral environment.⁷¹ He also argued that seniority allows chairs more time to develop productive information sharing partnerships with members of the executive branch and that members in competitive elections could find oversight beneficial when they seek reelection.⁷² With respect to 2019, however, we do not see a strong relationship between seniority, 2018 vote share, and committee oversight actions at the full committee or subcommittee level.⁷³ We see this visually in Figures 6 and 7, where a chair's vote share and seniority are graphed against the number of oversight actions performed by his or her subcommittee.⁷⁴ While the absence of evidence of a relationship does not mean that these factors played no role in chair oversight decisions, it is certainly possible that the political circumstances surrounding the Democrats' oversight strategy—and the Trump administration generally—may have led committee chairs to pursue more oversight and to be less responsive to the strategic incentives identified in earlier work.⁷⁵

70. Feinstein, *supra* note 32, at 129.

71. *Id.* at 147.

72. *Id.* at 130–31.

73. While the analyses of data at the full committee and subcommittee level produce similar patterns, we display only the subcommittee analysis visually here.

74. *See infra* Figures 6, 7.

75. *See infra* Figures 6, 7.

Figure 6: Oversight Actions by Subcommittee Chair 2018 Vote Share

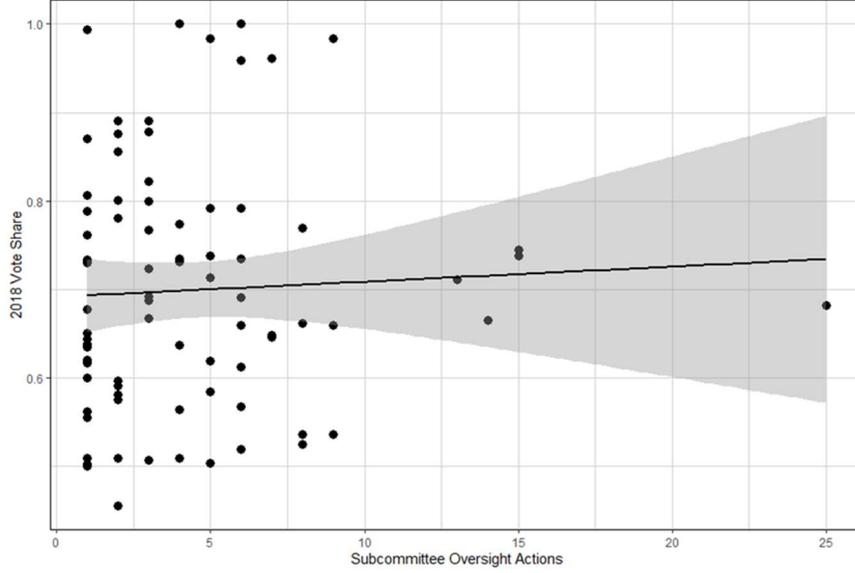
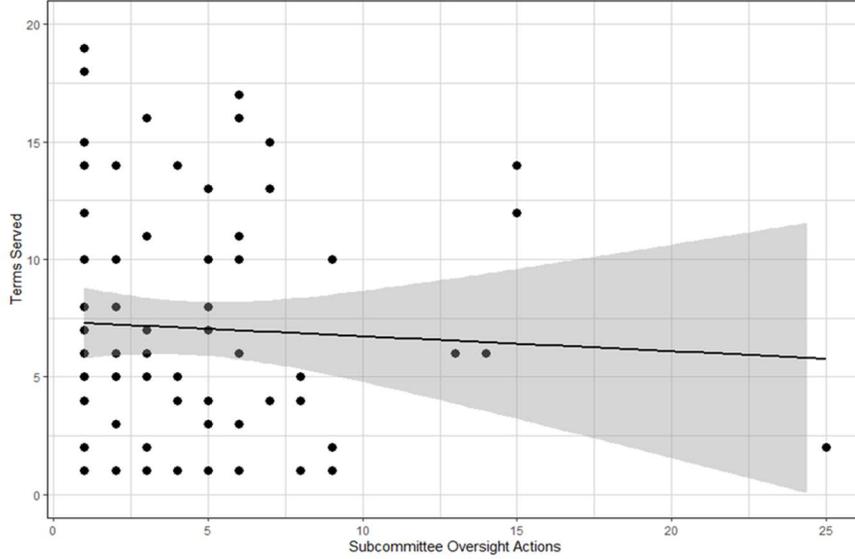


Figure 7: Oversight Actions by Subcommittee Chair Seniority



Other research found that committees are more likely to pursue oversight activity when they are more ideologically different than the executive branch they are overseeing. As Robert McGrath explained, “as policy conflict between a particular committee and the executive branch

increases, the committee becomes more likely to try to affect policy ex post via the mechanism of oversight hearings.”⁷⁶ While McGrath’s analysis leverages over-time change,⁷⁷ we might also expect that, within a given session of Congress, committee or subcommittee chairs who are more ideologically extreme—in this case, more liberal—would conduct more oversight. Our analysis, however, does not indicate a strong connection between the ideology of a committee or subcommittee chair and the number of oversight actions undertaken by their respective panel.⁷⁸ For subcommittees, for example, ideology and oversight activity are relatively weakly correlated, at -0.22.⁷⁹ Figure 8 displays this finding at the subcommittee level by graphing the 1st-dimension NOMINATE score for each subcommittee chair against the number of oversight actions their subcommittee was responsible for during 2019.⁸⁰ This, too, indicates that the motivations of key actors in the House in the 116th Congress may be different than the incentives facing similar legislators in other congresses.⁸¹

76. McGrath, *supra* note 9, at 364.

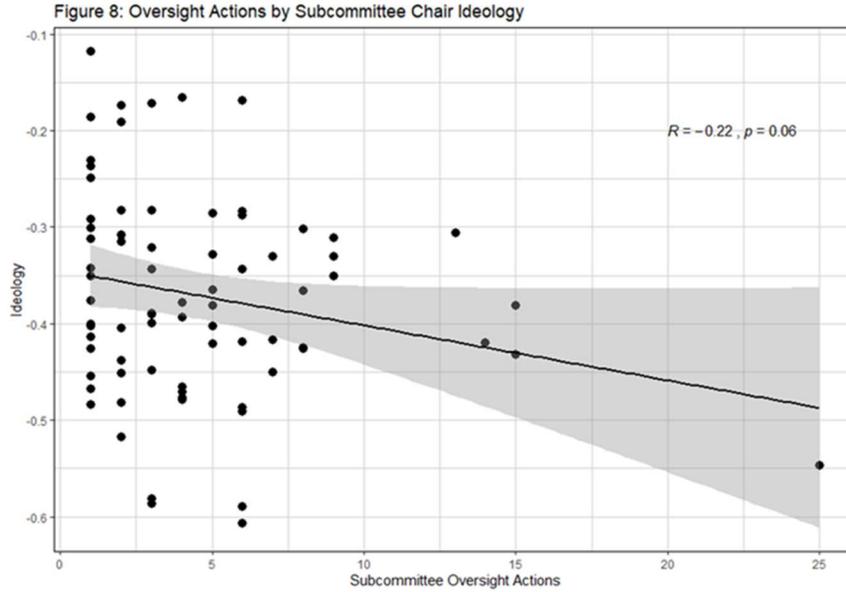
77. *See id.* at 350–51.

78. *See infra* Figure 8.

79. *See infra* Figure 8.

80. To access the NOMINATE data, see Jeffrey B. Lewis et al., *Voteview: Congressional Roll-Call Votes Database*, VOTEVIEW, <https://voteview.com/data> [<http://web.archive.org/web/20200404195158/https://voteview.com/data>] (last visited Apr. 2, 2020) (providing download links for NOMINATE scores).

81. *See infra* Figure 8.



Examining oversight efforts at the subcommittee level suggests, however, that certain types of subcommittees have been particularly important in the 116th Congress. Subcommittees of the Oversight and Reform committee, as well as the designated oversight subcommittees of full authorizing committees, were responsible for 34.2 percent of subcommittee oversight activity while only accounting for 12.4 percent of all subcommittees.⁸² Seven of these oversight subcommittee chairs were also first- or second-term representatives, suggesting that newer members may have been seeking oversight positions to prove their effectiveness to constituents.⁸³ Evidence that junior representatives have

82. Designated oversight subcommittees of full authorizing committees were counted if “Oversight” was included in the name of the subcommittee.

83. The seven first- or second-term representatives that served as oversight subcommittee chairs were Xochitl Torres Small (Subcommittee on Oversight, Management, and Accountability, Committee on Homeland Security), TJ Cox (Subcommittee on Oversight and Investigations, Committee on Natural Resources), Harley Rouda (Subcommittee on Environment, Committee on Oversight and Reform), Jamie Raskin (Subcommittee on Civil Rights and Civil Liberties, Committee on Oversight and Reform), Raja Krishnamoorthi (Subcommittee on Economic and Consumer Policy, Committee on Oversight and Reform), Mikie Sherrill (Subcommittee on Investigations and Oversight, Committee on Science, Space and Technology), and Chris Pappas (Subcommittee on Oversight and Investigations, Committee on Veterans Affairs). See CHERYL L. JOHNSON, LIST OF STANDING COMMITTEES AND SELECT COMMITTEES AND THEIR SUBCOMMITTEES OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES TOGETHER WITH THE JOINT COMMITTEES OF THE CONGRESS WITH AN ALPHABETICAL LIST OF THE MEMBERS AND THEIR COMMITTEE ASSIGNMENTS (2019),

been given significant oversight responsibilities, and have been leveraging those responsibilities to conduct vigorous oversight to establish their reputations, may indicate a new and different kind of strategic behavior—perhaps specific to the Trump era—that is worthy of further investigation.

IV. USING THE TRACKER'S DATA

In designing the Tracker, we made a series of choices that were intended to ensure the data assembled was useful to academics and the broader public. At the same time, there are limits to what we can do with the available resources. In a few situations, designing a tool intended only for researchers would have led us to slightly different decisions than we ultimately made in order to make the resource valuable for a wider set of users.

Perhaps the most significant choice we made was to include letters sent by House committees and subcommittees rather than simply focusing on hearings. While some research does examine the role of letters sent by Congress to agencies, such work generally focuses only on a subset of agencies and information obtained from agencies rather than Congress.⁸⁴ Because our data is based on letters collected directly from committees in the House of Representatives, it does not depend on agencies responding to requests from researchers to share information about their correspondence with Congress.⁸⁵ We are, however, at the mercy of the choices made by individual committees about whether to withhold particular letters from public release.⁸⁶ While it is impossible to know how many letters the Tracker is missing for this reason, the

http://clerk.house.gov/committee_info/scsoal.pdf
[https://web.archive.org/web/20190712005727/http://clerk.house.gov/committee_info/scsoal.pdf].

84. See, e.g., Kenneth Lowande, *Politicization and Responsiveness in Executive Agencies*, 81 J. OF POL. 33–48 (2019); Kenneth Lowande, *Who Polices the Administrative State?*, 112 AM. POL. SCI. REV. 874–90 (2018).

85. Congressional committees make most correspondence publicly available online either through press releases or a dedicated “correspondence” page. For example, see *Press Releases*, WAYS & MEANS COMM., <https://waysandmeans.house.gov/media-center/press-releases> [https://web.archive.org/web/20200608152548/https://waysandmeans.house.gov/media-center/press-releases]; see also *News List*, HOUSE COMM. ON THE JUDICIARY, <https://judiciary.house.gov/news/documentquery.aspx?DocumentTypeID=1952> [https://web.archive.org/web/20200608152750/https://judiciary.house.gov/news/documentquery.aspx?DocumentTypeID=1952.]. Executive branch correspondence can be available upon request; however, availability can vary between agencies, decreasing the robustness of data collection.

86. See *Methodology Statement*, *supra* note 25.

research team has encountered relatively few instances in which we learned of the existence of a letter—either in press reports or by reference in another letter or hearing—that we were unable to obtain using the approach outlined above. As a result, we believe the Tracker represents one of the most comprehensive repositories of letters sent by House committees to agencies for oversight purposes.

A second feature of the Tracker that makes it potentially useful to researchers is the categorization of each hearing and letter by its policy area.⁸⁷ To do so, we rely on the coding scheme developed by the Policy Agendas Project, which applies a set of policy topic codes to a wide range of media, legislative, executive, political party, and public opinion content.⁸⁸ In the United States, this includes congressional bills, roll call votes, executive orders, and party platforms.⁸⁹ Using an existing set of codes allows researchers to combine our data with analyses of other data categorized in the same way, as we do above with our examination of the Gallup data. In order to make the public display of the data in the Tracker most useful for non-research audiences, however, we chose to collapse the Policy Agendas Project's topic areas into ten more general policy areas.⁹⁰ We outline this mapping in the methodology statement included with the Tracker and are willing to make the underlying application of the Policy Agendas Project codes available to researchers on request.⁹¹

In the same vein, we have also applied existing numeric coding schemes for House committees and executive branch agencies to our hearings and letters data to ease the process of combining the information in the Tracker with other, existing data sources. House committees, for example, are coded using a numerical scheme matching one used by *Vital Statistics on Congress*; a crosswalk to match the committee-level data to a similar set of codes used by the Policy Agendas Project is available upon request.⁹² Hearing witnesses and letter

87. See Reynolds & Gode, *supra* note 20.

88. See, e.g., *Datasets/Codebooks*, COMPARATIVE AGENDAS PROJECT, https://www.comparativeagendas.net/datasets_codebooks [https://web.archive.org/web/20200404211312/https://www.comparativeagendas.net/datasets_codebooks] (last visited Apr. 2, 2020). Because our data collection began in January 2019, we used the 2015 version of the U.S. topics codebook, rather than the May 2019 version.

89. See *id.*

90. See *Methodology Statement*, *supra* note 25.

91. *Id.*

92. See *Vital Statistics on Congress*, BROOKINGS INST. (Mar. 4, 2019), <https://www.brookings.edu/multi-chapter-report/vital-statistics-on-congress/> [<https://web.archive.org/web/20200404211644/https://www.brookings.edu/multi-chapter-report/vital-statistics-on-congress/>] (last visited Apr. 2, 2020).

recipients who testify or are sent inquiries in their capacity as an executive branch employee are also coded using the Office of Management and Budget Treasury Codes for their agency and bureau, allowing users to combine our data with other agency-level datasets.

While these features of the Tracker are meant to make it useful to both researchers and other audiences, the Tracker, inevitably, has several shortcomings that mean it may not be well-suited for answering certain questions. While we collect information on all House hearings and publicly available letters, we only categorize those committee outputs into two groups: “oversight” and “not oversight.” As a result, it is difficult to compare oversight behavior to other kinds of committee activity without additional work by our research team or others. We cannot, for example, compare the share of oversight hearings a given committee held during the 116th Congress to the number of hearings about pending legislation it conducted.

A second shortcoming is that we do not examine efforts by House committees to oversee activity by actors outside of the executive branch. For example, at least three different House committees held hearings in 2019 examining the actions of pharmaceutical companies and their contributions to rising prescription drug prices.⁹³ The House Oversight and Reform Committee, under the leadership of the late Chairman Elijah Cummings (D-MD), made this a top priority, and subcommittees of the House Ways and Means and Energy and Commerce Committees also held multiple hearings on the topic.⁹⁴ Additionally, technology regulations were high on the congressional list of non-executive priorities.⁹⁵ Companies such as Google received multiple letters inquiring

93. See Jason Kleinman, *House Committees Review, Advance Drug Pricing Legislation*, ASS’N AM. MED. CS. (Oct. 18, 2019), <https://www.aamc.org/advocacy-policy/washington-highlights/house-committees-review-advance-drug-pricing-legislation> [<https://www.aamc.org/advocacy-policy/washington-highlights/house-committees-review-advance-drug-pricing-legislation>].

94. Chairman Cummings died on October 17, 2019. Jenna Portnoy, *Elijah Cummings, Baltimore congressman and civil rights leader, dies at 68*, WASH. POST (Oct. 17, 2019, 9:53 AM), <https://www.washingtonpost.com/nation/2019/10/17/elijah-cummings-dies-baltimore/House> [<https://web.archive.org/save/https://www.washingtonpost.com/nation/2019/10/17/elijah-cummings-dies-baltimore/>]. Democrats signature bill on prescription drugs, H.R. 3, has been named after the Congressman. See Elijah E. Cummings Lower Drug Costs Now Act, H.R. 3, 116th Cong. (2019).

95. See, e.g., Letter from Frank Pallone, Jr., Chairman, House Comm. on Energy and Commerce to Sundar Pichai, CEO, Google (Apr. 23, 2019), https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Google.2019.4.23.%20Letter%20to%20Google%20re%20Sensorvault.CPC_.pdf [<https://web.archive.org/web/20200404213723/https://energycommerce.house.gov/sites/d>

about their data sharing practices and other policies.⁹⁶ While this activity plays an important role in the policy process, it is not captured in our dataset.

Finally, due to both resource constraints and the underlying purpose of our research, the Tracker will only contain data from the 116th Congress. As a result, it will not allow for the monitoring of changes in oversight behavior over time. It is our hope, however, that by providing both the underlying data and information about our approach to collecting and coding it, other researchers could apply our strategies in the future.

V. CONCLUSION

This article outlines a new tool for tracking congressional activity, the Brookings House Oversight Tracker, and its utility for academic researchers and lay audiences. After the first year of divided party control under the Trump Administration, we analyzed the Tracker's data to observe House committees using hearings and letters to pursue vigorous oversight of the executive branch. We found that letters were an important, if previously understudied, tool of oversight activity. Hearings, meanwhile, were also a key venue for oversight but were somewhat less likely to cover the most newsworthy policy topics. For all oversight activities, importance to the American public was not always a factor for lawmakers in determining where to direct oversight activity. Finally, we did not find a relationship between the seniority or electoral competitiveness of a committee or subcommittee chair and their propensity for conducting oversight actions. Future research can use this data to further explore the effectiveness of oversight strategies and identify the characteristics of lawmakers who are particularly adept at using committee chair positions to hold the executive branch in check.

emocrats.energycommerce.house.gov/files/documents/Google.2019.4.23.%20Letter%20to%20Google%20re%20Sensorvault.CPC_.pdf].

96. *See id.*