

The Rise and Fall of Congressional Oversight of the Bureaucracy: The U.S. House Committee  
on Energy and Commerce, 1969-2018

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Abstract

I describe oversight by the U.S. House Committee on Energy and Commerce from 1969 to 2018, employing data from transcripts of oversight hearings. This approach reveals a substantial decrease in oversight by the Committee, beginning in the late 1980's. I document that, increasingly, the Committee has paid less attention to the activities of bureaucrats and more attention to examination of policies under its jurisdiction. The Committee's agenda in non-legislative hearings has been transformed—and less and less of it focuses on oversight of the bureaucracy. This account raises the question of whether oversight has declined similarly for other committees. Additionally, the documentation of a secular decline in oversight may encourage scholars to focus on theorizing about the basis for this decline.

Keywords: Oversight; Separation of Powers; Congress; Bureaucracy, Public Policy

Widespread delegation of policymaking authority to the bureaucracy (Bawn 1995; Bawn 1997; Epstein and O'Halloran 1999; Franchino and Høyland 2009; Huber and Shipan 2002, Ch. 7; Huber, Shipan, and Pfahler 2001; Huber and Shipan 2002, Ch. 6; McCann 2016; McCubbins, Noll, and Weingast 1987, 1989; Vanoni et. al 2021; Volden 2002) guarantees that agencies make a substantial number of important political and policy decisions with profound consequences for citizens' lives. To effectively represent constituents' interests, then, lawmakers must pursue vigorous oversight of the bureaucracy. That oversight is a critical facet of representation does not guarantee that lawmakers will always do their jobs, though. Lawmaking is obviously a part of lawmakers' jobs. Yet, effectiveness varies across lawmakers (Volden and Wiseman 2014, 2018). And Congress's productivity in enacting legislation to address problems varies across time (Binder 1999, 2003, 2015). Effort devoted to oversight may also vary over time—and in response to political factors that galvanize, or undercut, representatives' commitment to monitoring agencies.

In fact, research on oversight has described its prevalence and assessed explanations about why Congress conducts it. Most of this research has focused on a major oversight tool—committee hearings. Scholars have relied on counts of hearing days to measure oversight over time and across House and Senate committees.

Rather than relying on oversight hearing days to measure the prevalence of oversight, I collect information from transcripts of over 2,700 hearings to produce, I argue, a more valid indicator of the amount of oversight conducted by one committee in the U.S. Congress—the U.S. House Committee on Energy and Commerce (E&C)—covering a half century (1969-2018).<sup>1</sup> By examining information from the transcripts of non-legislative hearings, and by reporting on the

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<sup>1</sup> As discussed in more detail below, the reason for limiting this study to one committee's oversight is due to the time required to collect detailed data on witness's backgrounds.

substance of the opening statements of sub/committee chairpersons, I demonstrate that a substantial share of non-legislative hearings are devoid of oversight of the bureaucracy. In addition, I show that, compared to levels seen from the late 1970's through the mid/late 1980's, oversight began to decrease in the mid/late 1980's. There was then a step decrease in 1995 upon the Republican ascendancy to majority status after the historic 1994 midterm elections.

Oversight by the Committee has occurred at low levels—compared to the period spanning the mid-1970's and late 1980's—since. Increasingly—over approximately the past three decades—congressional oversight by this committee involves less and less scrutiny of agencies' decisions and more and more consideration of problems and issues under the committee's jurisdiction. This pattern is in contrast to other research that has presented trends in oversight that has relied solely on hearing counts.

I prioritize the description of oversight for several reasons consistent with Gerring's (2012—see especially 733-734) discussion of the importance of descriptive research in the social sciences. First, oversight is an important phenomenon in its own right. Congress requires knowledge about how agencies use discretion to fulfill its obligations under Article II of the Constitution. Members of Congress also have political incentives to learn about how bureaucratic policymaking affects constituents' lives. Second, prioritizing description can improve causal explanations. Although I do not evaluate explanations for oversight in this manuscript, the data reported below should inform subsequent theorizing on why oversight is, and is not, conducted. I turn to this matter in the conclusion.

Obviously, the generalizability of these findings is limited because I present data from one committee. Collecting fifty years of data from the transcripts of one committee was a substantial undertaking, though. Given the time involved in this data collection, it makes sense to

report the trends observed in these data before collecting additional data. Yet, if one is to conduct a case study of a committee, E&C has attributes that warrant examination of its record, including the size and diversity of its jurisdiction (King 1997) as well as its salience to stakeholders (Deering and Smith 1997, 95). Additionally, the political circumstances bearing on the Committee, such as the level of independence it possesses from party leadership within its chamber due to conditions that foster party government (Aldrich and Rohde 2000; Rohde 1991) vary identically to those facing other committees during this period. This is also the case regarding institutional resources that the committee possessed to undertake oversight: all House committees lost substantial staff resources after reforms enacted in 1995. These similarities ensure that many factors bearing on the ability of committees to pursue oversight were the same for E&C as they were for other committees, suggesting that the findings reported below may apply more generally.

### **Observing and Understanding Oversight by the U.S. Congress**

Early research on oversight involved case studies of a handful of congressional committees. These studies stressed that the amount of work committed to oversight was insufficient. Based on the time and effort devoted to oversight, committees could not be expected to evaluate the performance of agencies or influence agencies' decisions (Bibby 1966, 96; Ogul 1976, see especially 5,181-183, 185-186).

However, these studies were conducted before a substantial increase in oversight, starting in the mid-1970's (Aberbach 1990, 44-45). Combined with the expertise and size of professional committee staffs, this effort contributed to a "Committee Intelligence System" (Ch. 5) with "significant experience in the areas covered by the agencies they oversee and well-developed

communication networks” with “significant opportunities to push aside any veil covering bureaucratic decisions and activities” (103-104). Aberbach (2002) later revisited trends in oversight, finding similarly high levels of oversight into the late 1990’s based on the number of non-legislative hearing days committees held.

Subsequent work has focused on explaining why Congress pursues oversight. In finding that committees conduct oversight to promote policy goals, McGrath (2013) also charts oversight from 1947 to 2006, taking pains to distinguish hearings that involve oversight from those that do not. In these date, oversight days decreased during the late 1980’s and 1990’s to levels that were not seen since the early/mid-1970’s—but did not fall anywhere close to pre-1970 levels. With some variation, oversight days then increased in the mid/late 1990’s back to levels seen between the mid-1970’s to mid-1980’s. McGrath’s data then shows that oversight declines starting in the early 2000’s and plummets to levels not seen since the late 1960’s in 2006. MacDonald and McGrath (2016) show similar trends, though they present data through 2010, showing that the number of oversight days rebounded during the 110<sup>th</sup> Congress (2007-2008) to the highest levels observed between 1947 and 2010, declining only slightly during the 111<sup>th</sup> Congress (2009-2010).

The trend of increasing oversight is reinforced in subsequent research. In making a larger argument about the development of policymaking in American politics, Jones, Theriault and Whyman (2019) demonstrate that enactment of new laws in the 1960’s led to a “Great Broadening” in which the scope of government expanded. After this burst in lawmaking, Congress turned its eye to conducting oversight of how the executive branch made and implemented policy based on laws enacted during the Great Broadening (Jones, Theriault, and Whyman 2019, 184-187). Examination of the volume of non-legislative congressional hearing

days leads to the conclusion that oversight by committees increased from the 1990's well into the Twenty-First Century.

In summary, descriptive knowledge of longitudinal variance in oversight is based on counts of oversight hearing days. Often, scholars use non-legislative hearing days as an indicator of oversight hearing days. This focus leads to the view that oversight increased substantially during the 1970's, and mostly remained at high levels thereafter, vacillating from congressional session to session. Two decades into the Twenty-First Century, oversight appears to be robust, despite some sessions during which commitment to it waned.<sup>2</sup>

### **Measuring the Scrutiny of Agency Decision Making (Oversight) through Content Analysis**

This scholarship, though, has not recognized the range of activities comprising non-legislative committee hearings. As demonstrated below, many hearings involve members focusing on understanding issues and problems without inspecting agency behavior. For example, during the 114<sup>th</sup> Congress (2015-2016), E&C's Subcommittee on Commerce, Manufacturing, and Trade held nine hearings in a "Disrupter Series," on the implications of technological innovation for markets. A reading of the subcommittee chair's opening statements reveals that the hearings did not involve scrutiny of agency decisions or behavior. Learning about this issue is certainly worthwhile. Yet, no definition of oversight (see below) would recognize these hearings as such. The prevalence of such hearings compared to hearings that scrutinize agency policy making may vary over time. Relying on counts of non-legislative hearings, then, may not measure Congress's commitment to oversight accurately.

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<sup>2</sup> This is the case especially relative to the volume of lawmaking, as the number of legislative hearings has decreased substantially (Lewallen 2020).

Hearings are a rich source of information about oversight, however. I draw on information from hearing transcripts to provide insight into the purposes of non-legislative hearings and to describe the volume of, and trends in, oversight of the executive branch conducted by E&C from 1969 to 2018.<sup>3</sup> I draw on information from over 2,700 non-legislative hearings held by E&C over fifty years. Importantly, despite using hearing data to evaluate explanations about why oversight occurs, scholars have not looked under the hood and examined the content of hearings. Lifting the hood yields two important findings. First, a substantial proportion of non-legislative hearings do not involve scrutiny of agency decisions in any way that can be considered oversight of the bureaucracy. Second, oversight has declined over the last two to three decades to a greater extent than could be gauged by relying on counts of hearings. Only by drawing on information from transcripts would one be able to see, and understand, this trend.

To investigate what occurs in non-legislative hearings, I read the opening statements given by (sub)committee chairpersons at the beginning of all 143 non-legislative hearings held by E&C during the 100th (1987-1988) Congress twice.<sup>4</sup> In addition, I read opening statements

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<sup>3</sup> The task of distinguishing legislative from non-legislative hearings was accomplished in one of two ways. For most legislative hearings, the title page of the transcript states that the (sub)committee had met to consider a bill and provides the H.R. bill number of that legislation. These hearings were excluded. In some cases, though, no H.R. number is provided but the description of the hearing on the title page notes that the purpose of the hearing is to consider legislation. These hearings were similarly excluded. Second, I examined the opening statements of the sub(committee) chairperson to ascertain whether the hearing was legislative. In some cases, although no H.R. number was listed on the transcript's title page, the purpose of the hearing was referred to by the chairperson as "legislative." To be considered "legislative" according to this criterion, then, the chairperson had to have declared the hearing to be "legislative" or to have noted that the committee was considering legislation in the hearing. In rare circumstances, the text of a transcript included more than one hearing that occurred during more than one day—and included both legislative and oversight hearings. In these cases, I included only the information from the oversight hearings in the data reported below.

<sup>4</sup> The largest number of non-legislative hearings in a session occurred during the 100th Congress.

from 15 randomly sampled non-legislative hearings from each session between the 91<sup>st</sup> (1969-1970) and 115<sup>th</sup> (2017-2018) Congresses.<sup>5</sup> This close reading revealed that the primary purpose of non-legislative hearings fell into one of four categories described below. Table A1-1 and the associated discussion in Appendix A1 of the Online Appendices demonstrate the reliability of the content analysis that produced these data.

In classifying the purpose of non-legislative hearings, I relied on definitions of oversight from political science research. Early work stressed Congress's role in influencing agencies' decisions. Bibby (1966, 78) stressed, "the need for legislative control of administrative action if representative government is to function properly." Similarly, Ogul (1976, 11) defined oversight as "behavior by legislators and their staffs, individually or collectively, which results in an impact, intended or not, on bureaucratic behavior." Subsequent research continued to examine Congress's focus on agencies. Aberbach (1990, 2) emphasized "review of the actions of federal departments, agencies, and commissions. . . Oversight, then, is a significant facet of congressional efforts to control administration and policy." Ferejohn and Shipan (1990) modeled the circumstances under which agencies could be expected to be responsive to congressional entreaties. Shipan (2004) observed such influence is, at least in part, conditional on Congress's

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<sup>5</sup> I examined 365, rather than 375, hearings (25 congressional sessions multiplied by 15 hearings equals 375 hearings) for three reasons. In some of the earlier congresses, there were few non-legislative hearings. In the 91<sup>st</sup> session, there were only 14 such hearings. This led to the loss of one observation from the sample, leaving me with 374 hearings. Second, some of the transcripts listed as "hearings" in earlier congressional sessions were not hearings at all. Instead, they merely contained materials from other hearings' records. I did not classify such transcripts as hearings and did not count them after they were sampled. This eliminated six hearings, leaving me with 368 hearings. Finally, some hearings that were sampled turned out to be legislative, rather than non-legislative, hearings. Accordingly, I removed an additional three hearings, leaving me with 365 hearings. That only three of 368 remaining hearings were initially identified incorrectly as non-legislative hearings suggests that the process I employed to identify non-legislative hearings was successful. To sample the hearings, I generated a random variable according to a uniform distribution and examined the first fifteen hearings from each session.



ability to reverse agencies' decisions. The most recent scholarship on oversight, cited above, has focused more on modeling its incidence. But the explanations for oversight developed in these studies, as well as their empirical findings stress the same thing. More oversight is done when Congress disagrees with agencies over what policy decisions should look like (see especially McGrath 2013). Political science research has clearly characterized oversight as a phenomenon in which Congress scrutinizes, and tries to influence, bureaucratic policymaking. This focus makes sense in light of scholars' concerns about the democratic accountability of agencies to elected lawmakers.

One set of hearings involved "No Oversight" in that the primary purpose of these hearings was to learn about problems and issues—and no consideration of agencies' activities or behavior was referred to in the chairperson's statement. For example, in one hearing on "Automobile Insurance" during the 100<sup>th</sup> Congress, the Chair of the Subcommittee on Commerce, Consumer Protection, and Competitiveness, Rep. James Florio, D-NJ, used the hearing to explore why premiums had skyrocketed. Based on Florio's statement, the subcommittee examined no decisions by federal agencies. It could not have. No federal agency regulated automobile insurance—the industry was regulated at the state level. According to Table 1, nearly two-fifths of the non-legislative hearings in the 100<sup>th</sup> Congress fell into this category. Almost half (44.93%) of the hearings from the sample for the fifty-year period involved no oversight.

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**Table 1. The Primary Purpose of Non-Legislative Hearings**

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	<u>100<sup>th</sup> Congress</u>	<u>91<sup>st</sup> to the 115<sup>th</sup> Congresses</u>
No Oversight (Examine Issues/Problems)	54 (37.76%)	164 (44.93%)
Secondary Oversight (Primary Focus on Issues/Problems)	16 (11.19%)	26 (7.12%)
Oversight (Scrutinize Agency Decisions)	66 (46.15%)	168 (46.03%)
Advocate for Programs	7 (4.90%)	7 (1.92%)
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N	143	365
Column Percentage	100.00	100.00

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A second set of hearings involved “Secondary Oversight.” The primary purpose in these hearings was also learn about problems and issues. However, the committee considered activities and decisions of agencies as a secondary matter. For example, a hearing on “Clinical Laboratories” held by the Subcommittee on Oversight and Investigations during the 100<sup>th</sup> Congress focused on rampant fraud by, and poor-quality work in, laboratories that billed Medicare and Medicaid for tests conducted on these programs’ beneficiaries. Chairman John Dingell’s, D-MI, statement focuses primarily on problems in laboratories. However, he added that the subcommittee would review the insufficient job done by the Health Care Financing Administration (HCFA) in monitoring contractors—as well as the culpability of the Reagan Administration for cutting funding for such auditing. These hearings comprised about 11% and 7% of the non-legislative hearings from the 100<sup>th</sup> Congress and the sample from the fifty-year period respectively.

The opening statements also demonstrated that a third set of hearings involved “Oversight” of the bureaucracy. In such hearings, the primary purpose was to scrutinize the decisions and behavior of agency personnel. For example, in a hearing on the “EPA, Ozone, and the Clean Air Act” held by the Subcommittee on Oversight and Investigations, Chairman Dingell’s statement highlighted the agency’s failure to facilitate attainment of program goals as well as the illegality of its plans to achieve attainment. The opening statement demonstrates that the agency’s decisions and behavior were the primary topic of the Subcommittee’s focus. This class of non-legislative hearing—focusing specifically on reviewing policymaking in agencies—is what the definitions of oversight have in mind. Table 1 shows that such hearings amounted to just under half (about 46%) of the agenda of non-legislative hearings both in the 100<sup>th</sup> Congress and for the 1969-2018 sample.

Finally, a fourth type of hearing involved “Program Advocacy” (Aberbach 1990, Ch.8). In these hearings, the chairperson discusses that a hearing’s purpose is to examine a program or set of programs, evincing support for the program(s), and sometimes previewing supportive statements from stakeholders. This dynamic is on display in the transcript on the “Federal Childhood Immunization Program” hearing held by the Subcommittee on Health during the 100<sup>th</sup> Congress. The subcommittee chair, Rep. Henry Waxman, D-CA, emphasized the effectiveness of the programs from a public health standpoint and their cost effectiveness in terms of benefits relative to costs. In such hearings, the (sub)committee holding the hearing did not scrutinize agency decisions—far from it. The hearings involved cheerleading for programs. Although only about 5% and 2% of all hearings involved such advocacy during the 100<sup>th</sup> Congress and for the fifty-year sample respectively, the purpose of these hearings was distinct from the other types of hearings.

Nearly two-fifths of non-legislative hearings in the 100<sup>th</sup> Congress and about 45% of hearings for the fifty-year sample involved no scrutiny of agency decisions. This in itself is a significant finding. Scholars have used counts of these hearings as indicators of oversight without knowledge of how large a percentage of these hearings involve no scrutiny of executive branch policymaking.

On the other hand, that a large share of non-legislative hearings involves no oversight may not be a measurement problem. Scholars wish to model oversight to understand why Congress conducts more or less of it. As long as the share of non-legislative hearings that do involve scrutiny of agency behavior and policymaking is constant over time (and, potentially across units, such as committees), a count of non-legislative hearings should be a valid proxy measure for oversight. If, however, the share of such hearings that involve scrutiny of agency decisions changes over time, then charting non-legislative hearings will provide an inaccurate description of how much oversight Congress has conducted. For example, congressional committees may have continued to have a large number of non-legislative hearings over the last several decades. However, the percentage of these hearings in which committees look into the behavior and decisions of agency personnel may have declined. Relying on counts of non-legislative hearings would miss this potential diminution in oversight.

### **Establishing the Construct Validity of Executive Branch Witness Counts as a Proxy Variable for Oversight**

To measure oversight across time, a sufficiently large sample of hearings from each congressional session is necessary. The sample of fifteen hearings from each session described in Column 2 of Table 1 cannot provide an efficient point estimate for the volume of oversight during a given session, precluding using this sample to chart oversight from 1969 to 2018.

Larger within session samples would provide more precise estimates. However, the measurement strategy employed in Table 1 is prohibitive. Reading the volume of text from a larger sample across the twenty-five sessions is too time intensive. Automated coding of text in theory could replicate the coding decisions reflected in Table 1 for a larger sample. However, readable text of these hearings is not publicly available and accessing the hearings remotely via automated processes violates the terms of use of the vendor.<sup>6</sup>

Fortunately, transcripts offer additional information about the level of scrutiny agency policymaking receives. Specifically, transcripts provide lists of witnesses—and their affiliations. One aspect of these affiliations that provides information on whether a hearing involved oversight is whether executive branch personnel testified. In counting personnel, I include individuals representing bureaucratic agencies (political appointees and civil service personnel) and the Executive Office of the President. Such personnel are the most well-positioned to provide information to Congress about executive branch decisions and behavior. Although witnesses from stakeholder groups can provide information about bureaucratic policymaking, there is no substitute for firsthand information about the internal machinations of agencies. Trade and professional associations can inform Congress about policies—from regulations to enforcement actions—to which their members object. However, only bureaucrats can inform Congress about the behavior within agencies that leads to these decisions. If Congress wishes to understand, and potentially alter, these policies, it requires an understanding of how and why agency personnel are creating them. Access to bureaucratic personnel, then, is vital to oversight of the bureaucracy. Therefore, when the primary purpose of a hearing is to scrutinize

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<sup>6</sup> I obtained the text of the hearings and all information reported below from Proquest Congressional.

bureaucratic policymaking, it is likely that executive branch personnel will testify. From a face validity standpoint, it makes sense that a count of bureaucratic personnel will serve as a valid indicator of oversight.

Before relying on this count to measure oversight, it is important to assess the variable's validity. Is the variable associated strongly, and in a logical manner, with a variable that unambiguously demonstrates the presence of oversight? By design, I produced such a variable from the coding conducted for, and reported in, Table 1. Based on a close reading of the opening statements from the 143 hearings from the 100<sup>th</sup> Congress and the sample of 365 hearings from 1969 to 2018, it is clear what hearings did and did not involve oversight. Since I argue above that a larger number of executive branch personnel indicates greater oversight, the number of executive branch personnel should be positively and significantly associated with the probability of oversight in these hearings. If this is the case, and the magnitude of the relationship is substantively large, the results will provide support for the construct validity of this variable as an indicator of bureaucratic oversight. Therefore, for the hearings described in Table 1, I estimate models of the probability that hearings involved oversight, including a count of executive branch personnel as the key independent variable in the models.

I present logit estimates from four models in Table 2. In Model 1, I examine all non-legislative hearings from the 100<sup>th</sup> Congress described in the first column in Table 1. The dependent variable equals 1 when the primary purpose of the hearing was to scrutinize agency decisions; 0 otherwise.<sup>7</sup> Therefore, I estimate the probability that the primary purpose of a non-

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<sup>7</sup> I present logit models in the table in lieu of multinomial logit models. I also estimated the latter. And in every model, the number of executive branch personnel was positively and significantly associated with the probability that hearing's primary purpose was to scrutinize agency decisions. Results are available from the author. However, several models could not return estimates for all of the fixed effects and yielded inefficient estimates for the category of "program advocacy." Table 1 demonstrates why: the small number of observations from this category.

legislative hearing is oversight, where the reference category bundles the three other categories described in Table 1. The model estimates fixed effects for each subcommittee and controls for the total number of witnesses in each hearing, the number of pages hearing transcripts spanned, and the number of calendar days during which hearings occurred. I collected all data from the

Table 2. Logit Estimates of the Probability of Oversight Occurring in Non-Legislative Hearings of the House Committee on Energy and Commerce

<i>Variable</i>	<u>100<sup>th</sup> Congress</u>		<u>91<sup>st</sup>-115<sup>th</sup> Congresses Sample</u>	
	(1)	(2)	(3)	(4)
Constant	-.81 (.54)	-.29 (.57)	-3.32 (1.08)	-.57 (.75)
No. of Executive Branch Personnel	.36*** (.09)	.42*** (.11)	.56*** (.08)	.54*** (.08)
Total No. of Witnesses	-.08 (.06)	.03 (.06)	-.22*** (.04)	-.16*** (.03)
No. of Transcript Pages (in hundreds)	.37* (.17)	.44* (.21)	.26* (.12)	.22 <sup>†</sup> (.11)
No. of Hearing Days	-1.18* (.45)	-2.05** (.59)	.14 (.21)	-.11 (.20)
Subcom. Fixed Effects	Yes	Yes		
Session Fixed Effects			Yes	Yes
Policy Fixed Effects			Yes	Yes
N	143	143	364	364
Log Likelihood	-65.15***	-54.82***	-169.73***	-184.36***
Pseudo R-Squared	.34	.44	.32	.27

NOTES: Columns 1 and 3 estimate models for which the dependent variable equals 1 if the hearing's primary purpose was to scrutinize agency decisions; 0 otherwise. In columns 2 and 4, the dependent variable equals 1 if the hearing's primary purpose was to scrutinize agency decisions or if its primary purpose was to examine issues/problems but also considered agency decisions to some extent; 0 otherwise. \*\*\*p<.001; \*\*p<.01; \*p<.05; <sup>†</sup>p<.10.

hearing transcripts. Model 1 shows that, as the number of executive branch personnel testifying increases, the probability that a hearing's primary purpose is oversight increases (p<.001). This finding, then, supports the view that the testimony of executive branch personnel is associated with bureaucratic oversight. Notably, simply having a larger number of witnesses testifying in a hearing is not associated with a higher probability of oversight. It is bureaucratic personnel—not witnesses—that increases the probability that a hearing involves oversight. The model also

controls for the number of pages spanned by the transcript, showing that the number of pages a transcript spans is positively and significantly associated with the probability of oversight. Finally, the greater number of calendar days the hearing spans, the less likely the hearing's purpose is oversight, suggesting that longer hearings involve the committee engaging in research to learn about problems/issues.

Model 2 differs from Model 1 in that the dependent variable is coded 1 when the primary purpose of the hearing was to scrutinize agencies decisions or was to look into a problem/issue but also involved oversight secondarily. As such, the model estimates the association between the independent variables and the probability that any bureaucratic oversight occurred. Briefly, the findings are largely similar to Model 1. Notably, compared to Model 1, the magnitude of the coefficient for the number of executive branch personnel increases and remains statistically significant. The dependent variable in Model 3 is identical to that in Model 1; and in Model 4, the dependent variable is identical to that in Model 2. However, the data employed in models 3 and 4 are from the sample of hearings from each of the 25 sessions between 1969 and 2018 described in the second column of Table 1.<sup>8</sup> In the models, the number of executive branch personnel testifying is positively and significantly associated with the probability that the primary purpose of hearings was oversight (Model 3) and that there was any oversight (Model

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<sup>8</sup> Another difference between models 3 and 4 (compared to 1 and 2) is the estimation of fixed effects. I include fixed effects for congressional session in models 3 and 4. Given the elimination and creation of new subcommittees over time, it was not possible to estimate subcommittee fixed effects—the model would not return estimates for many of the fixed effects. Therefore, I subdivided the topics of the hearings into one of seven policy areas and estimated fixed effects for these. Appendix A2 describes disaggregation of the policy areas within the Committee's jurisdiction over fifty years into these seven categories. These fixed effects control for aspects of each policy (e.g., health) within the Committee's jurisdiction that are unique to the policy but do not vary over time.



4).<sup>9</sup> As in models 1 and 2, the number of witnesses is not associated with the probability of oversight. When the committee questioned greater numbers of witnesses generally, it was not doing so to scrutinize agencies' decisions. Again, oversight is associated with higher number of executive branch witnesses—not a greater number of witnesses overall.



Figure 1 presents the estimated influence of testimony by executive branch personnel based on findings from Model 1 with 95% confidence intervals. One observes a substantial increase in the probability of primary purpose oversight across the range of the independent variable, the modal value of which is 3 (mean = 3.41; standard deviation = 3.10). As the number of personnel increases from 3 (slightly below the mean) to 6 (slightly below a one standard

<sup>9</sup> There is one fewer observation in models 3 and 4 of Table 2 than is included in the figures presented in the second column in Table 1. This is because one observation was an outlier in that 52 executive branch personnel testified at a hearing the primary purpose of which was oversight. The observation was completely determined by the model; accordingly, I dropped it.

deviation increase in the variable), the probability that a hearing's primary purpose is to scrutinize agency decisions increases from .43 to .62.

In summary, the finding that the number of executive branch personnel is associated with an increased likelihood of bureaucratic oversight is important in and of itself. Rather than relying on counts of hearing days, scholars may instead choose to model counts of executive branch personnel testifying in non-legislative hearings when studying oversight in the future. Trends discussed in the next section highlight why scholars may prefer to do so.

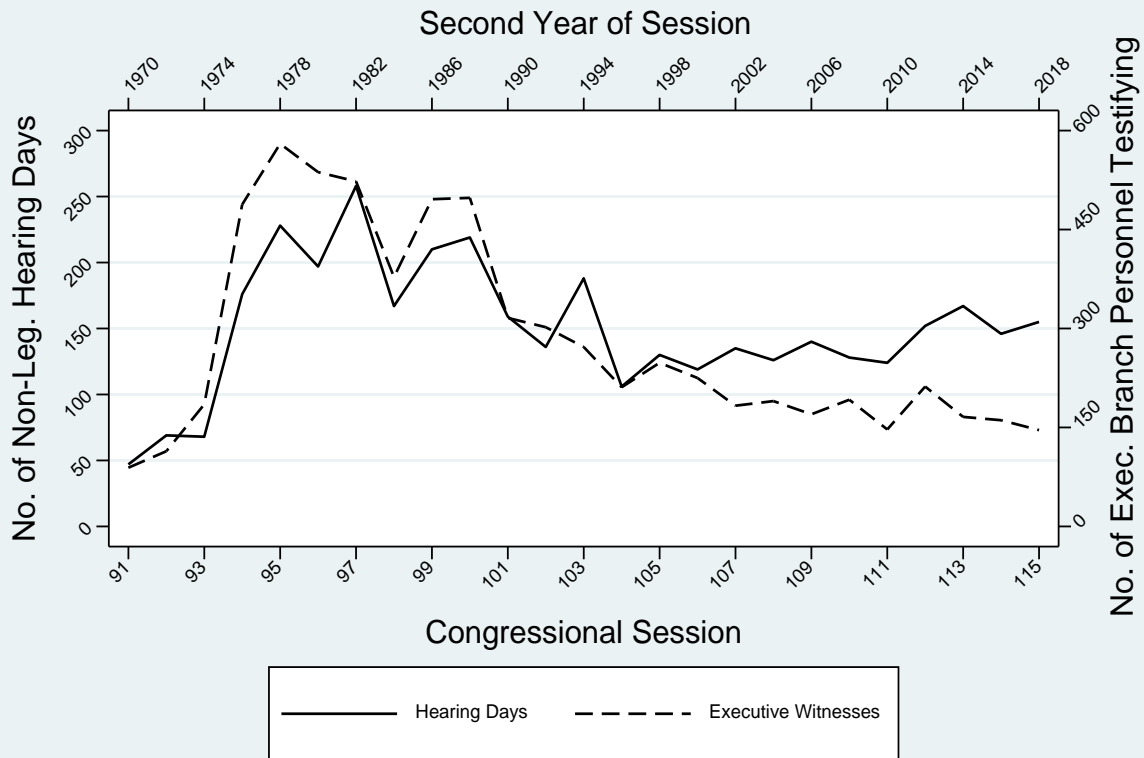
### **Describing the Volume of Oversight by the House Committee on Energy and Commerce, 1969-2018**

Given that the number of executive branch personnel is substantively and significantly ( $p < .001$ ) associated with the likelihood of oversight, I aggregate the count of the number of executive branch personnel testifying before E&C to the congressional session level. I use this count as an indicator of the volume of oversight conducted by the committee across time. The count of executive branch personnel comes from a larger project for which I coded the affiliations of over 26,000 witnesses who provided testimony at over 2,700 hearings before E&C and its subcommittees from 1969 to 2018.<sup>10</sup> It is displayed in Figure 2 along with the number of non-legislative hearing days during this period.

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<sup>10</sup> Appendix A3 in the Online Appendices describes the coding of witnesses.

Figure 2. House Energy and Commerce Non-Legislative Hearing Days and No. of Exec. Branch Personnel Testifying, 91st to 115th Congresses



In examining the number of executive branch personnel who testified from 1969 to 2018, one observes a different picture of the amount of oversight conducted by E&C than if one relied on a count of hearings. The trends largely “hug” one another until the mid-1990’s. One observes the volume of both hearings and executive branch witnesses increase substantially from the late 1960’s into the mid 1970’s. Both series remain at relatively high levels through the mid/late 1980’s. The number of witnesses peaked in the late 1970’s while the number of non-legislative hearing days peaked in the early 1980’s.<sup>11</sup> As measures of oversight frequency, both measures

<sup>11</sup> Given the disruption that the energy crisis had on the United States in the 1970’s one may wonder whether the high levels of oversight observed in the 1970’s were due to the Committee’s response to this crisis. However, high levels of oversight persisted well into the mid/late 1980’s when the energy crisis had faded. The large volume of oversight during this period, then, cannot be attributed to the energy crisis.

decline into the mid-1990's. Importantly, this decline predates the 104<sup>th</sup> Congress (1995-1996) when the Republican Party newly in the majority, after forty years in the minority, slashed committee staffs in half. Any explanation for why Congress conducts oversight, then, will have to account theoretically for the basis of this decline independent of this historic decline in committee resources.

The most striking aspect of the figure, though, is the divergence in trends beginning in the early 2000's. Specifically, the Committee began to increase the number of non-legislative hearing days from its low-point during the mid-1990's. This is consistent with Lewallen's findings (2020) that committees generally increased non-legislative, compared to legislative, hearings during this period due to the difficulty of legislating. Critically however, Figure 2 reveals that, as non-legislative hearings increased, the number of executive branch personnel testifying—associated strongly and positively with oversight—declined. This finding reveals then that, between the mid-1990's and the late 2010's, the Committee engaged in less and less oversight even as it held more and more non-legislative hearings.

In summary, E&C's oversight peaked during the mid-1970's to the mid/late 1980's. It declined starting in the late 1980's through the early 1990's, dropping further in the 104<sup>th</sup> Congress (1995-1996). If one were content to focus on hearing days, it would appear that the commitment to oversight recovered somewhat throughout the rest of the period. However, using the number of executive branch witnesses as an indicator tells another story. E&C heard from fewer and fewer executive branch witnesses on policies under its jurisdiction. This is the case, obviously, comparing witness executive branch witness counts in the 115<sup>th</sup> Congress to counts from the mid-1990's. But the contrast is even starker comparing such counts in the 115<sup>th</sup> Congress to counts between the late 1970's and mid/late 1980's. Clearly, the committee engaged

in much less bureaucratic oversight in the 2000's and 2010's compared any time between the mid-1970's and early 1990's.

Figures 3a and 3b provide additional information about the decline in oversight. The solid line in Figure 3a replicates the series charting the number of executive branch personnel from Figure 2. The dashed line in Figure 3a displays the percentage, out of all witnesses, of executive branch personnel providing testimony. One observes a relatively steady decline over time. Beginning in the late 1960's, almost half of all witnesses were from the executive branch. However, with the substantial increase in non-legislative hearing days depicted in Figure 2, this percentage decreased into the high 20's and low 30's until the early 1990's. After that, it vacillated in the 20's and high teens.

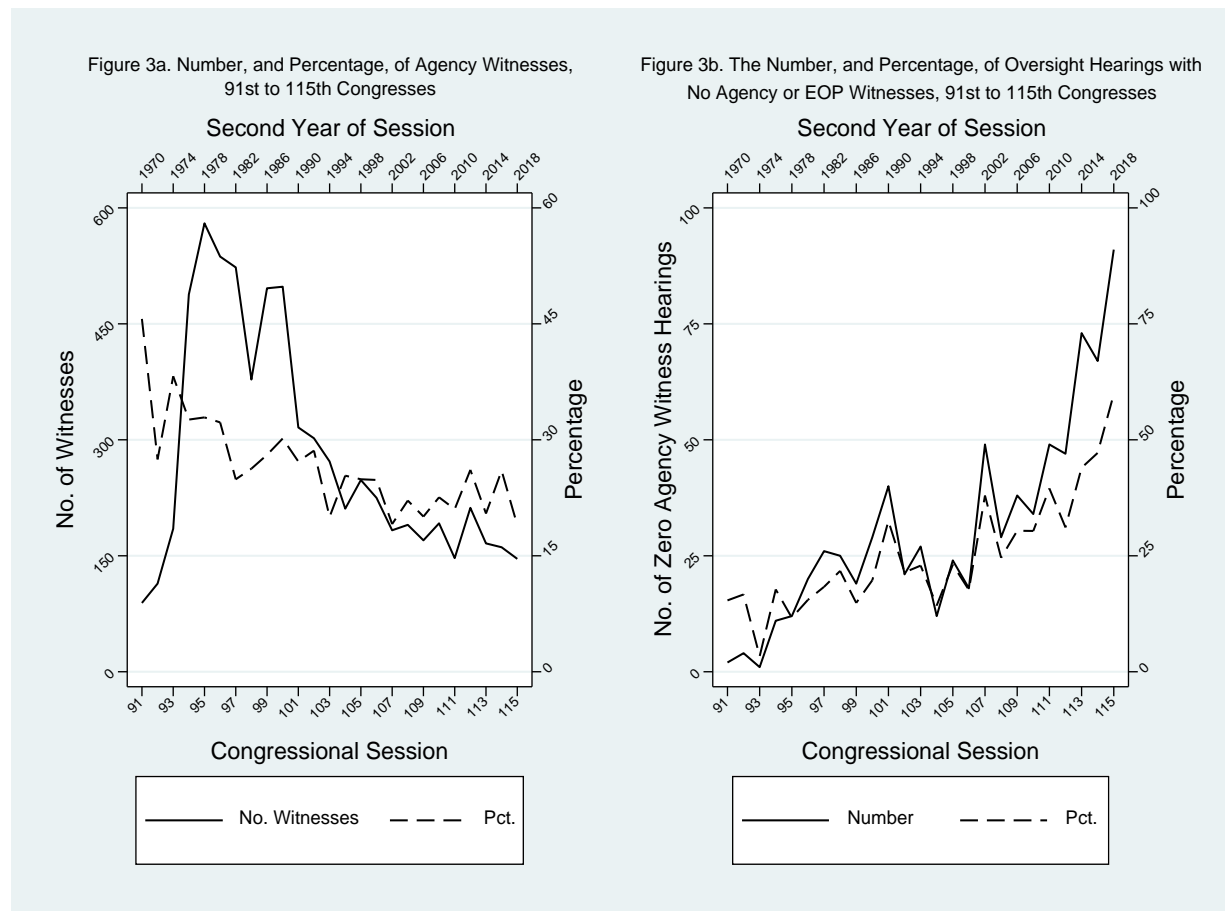


Figure 3b illustrates the decline in testimony by executive branch personnel in different terms, charting the number, and percentage, of hearings at which zero personnel from the executive branch testified. This figure reveals a dramatic change in the presence of executive branch personnel at hearings in recent years. Focusing on the percentage of hearings with no personnel, fewer than 20% of the hearings can be characterized as such during the first fourteen years of the series (1969-1982). This percentage (barely) sneaks above 20% in the 99<sup>th</sup> Congress (1985-1986) but then remains below this mark again until the 101<sup>st</sup> (1989-1990). The percentage does not remain consistently over 20% until the 109<sup>th</sup> Congress (2005-2006) when it is roughly 30%. By the 113<sup>th</sup> Congress (2013-2014), it exceeds 40%, increases to just over 47% in the 114<sup>th</sup> Congress (2015-2016), and surges to almost 60% in the 115<sup>th</sup> Congress (2017-2018).

Based on the indicator of executive branch personnel providing testimony at non-legislative hearings, E&C has conducted much less bureaucratic oversight for decades than it did for the roughly ten-year period between the mid-1970's and mid/late 1980's. However, one would not gain an appreciation for this decline simply by considering the number of non-legislative hearing days. Only by examining trends in testimony by executive branch personnel in the dotted series in Figure 2 does one observe the unmistakable—and unabated—plunge in the Committee's commitment to oversight beginning in the late 1980's, and continuing through the end of the series. Whether this trend applies to other committees is an open question. More thoroughly describing the oversight activity of a greater number of committees should be a goal of future research.

The diminution in oversight charted in Figure 2 could be due to one or both of the following changes. First, more and more hearings in recent decades could involve no oversight. This appears to be the case based on Figure 3b. Second, for any given oversight hearing, E&C

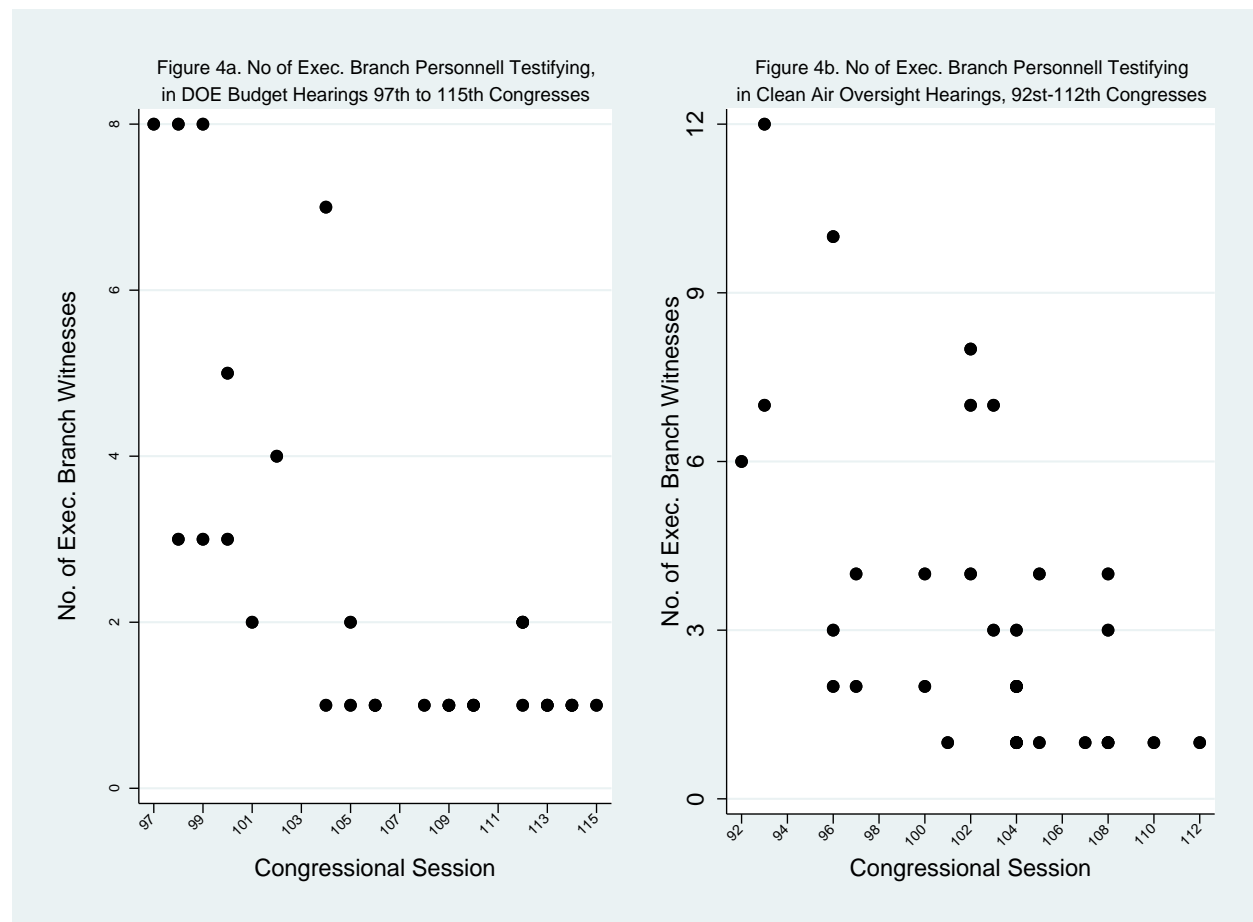
may do less oversight in recent years than in the past. In other words, oversight hearings in 1985 may have involved more oversight than oversight hearings in 2015.

To investigate this possibility, I examine all E&C oversight of the Department of Energy's (DOE) budget and of the Clean Air Act. I selected these cases because they unambiguously involve examination of bureaucratic activity and the E&C regularly conducted oversight on these topics during much of the period under study. By examining these subjects, I guarantee that indicators of oversight effort mean the same thing in 2015 as they meant in 1985. If E&C hears from consistently fewer witnesses from agencies in the latter period than the earlier period, one will know that—on these issues—E&C exerted less effort on oversight of agencies in later periods than earlier ones.

E&C held twenty-eight hearings on the DOE's budget between the 97<sup>th</sup> (1981-1982) and 115<sup>th</sup> (2017-2018) Congresses. Table A3-1, presented in the Online Appendix to conserve space, provides information on these hearings, displaying the number of days over which the hearings occurred and the positions held by these personnel. The first hearing examined the agency's budget during the 97<sup>th</sup> Congress (1981-1982), unfolding over five days. Eight DOE and Department of State personnel testified, including the Acting Under Secretary of Energy and the Acting Assistant Secretary of Fossil Energy. Bureau-level personnel also testified. Scanning down in Table A3-1 as the years progress, one observes that oversight of the DOE's budget takes up fewer and fewer days and that E&C hears from fewer and fewer agency personnel.

In the fifteen hearings between the 106<sup>th</sup> (1999-2000) and the 115<sup>th</sup> Congresses (2017-2018), the Secretary of Energy was the only witness to testify in thirteen of the hearings. The scatterplot in Figure 4a provides a visualization of this shift. This finding suggests that in later years, E&C conducted less oversight of the Department of Energy during consideration of its

budget requests than it did earlier in the period. This is consistent with the view that, in later periods, when oversight was conducted it was conducted less vigorously than in the 1970's and 1980's. This finding is also reflected in figures A1 and A2 in the Online Appendix, which plot days and transcript pages devoted to oversight of the DOE's budget. E&C spent fewer days conducting oversight of the DOE and its hearings spanned fewer pages in later years than in earlier ones.



Oversight of the Clean Air Act is similar. E&C held thirty-three hearings on this subject. The first such hearing occurred in 1971 during the 92<sup>nd</sup> Congress—the last occurred in 2011 during the 112<sup>th</sup> Congress. Figure 4b documents the decline in agency personnel testifying at hearings on the Clean Air Act. For most Clean Air Act oversight hearings during the 1970's



(between the 92<sup>nd</sup> and 96<sup>th</sup> Congresses), at least a half dozen witnesses from agencies testified. The column on the far right of Table A3-2 in the Online Appendix reveals the diversity of witnesses at these hearings. High ranking agency personnel from within the EPA—and from agencies with related jurisdictions—testified. Starting in the early 1980’s, the number of bureaucratic witnesses declined. Several hearings during the 102<sup>nd</sup> (1991-1992) and 103<sup>rd</sup> Congresses involved testimony from seven executive branch witnesses in two hearings and eight such witnesses in another hearing. These hearings occurred just after Congress’s enactment of the Clean Air Act Amendments of 1990. It may be that E&C was engaging in oversight, proximate to the enactment of the law, to influence its implementation (MacDonald and McGrath 2019). Subsequently, E&C continued to hear from four or fewer bureaucratic personnel, as shown in Figure 4b. Figures A3 and A4 in the Online Appendix also show that the E&C devoted fewer days to overseeing the Clean Air Act (A3) and, when holding hearings, the transcripts spanned fewer pages (A4) in later years than in earlier ones. In total, both oversight of the DOE’s budget and the Clean Air Act suggest that when Congress conducted oversight during later periods, it did less of a thorough job than it did during earlier ones. Given the same issues, the Committee queried fewer executive branch witnesses, met on fewer days, and recorded less of a record in transcript pages in later, than earlier, years.

## **Conclusion**

Description of trends in oversight by E&C over fifty years provides a number of lessons about oversight by the Committee. The first lesson is that oversight has decreased. After initially increasing in the 1970’s, reaching relatively high levels, the commitment to oversight waned. E&C’s commitment to bureaucratic oversight cratered, starting in the mid/late 1980’s and

continuing into the first decades of the Twenty-First century. The description of this sea-change may be the most important contribution of this manuscript's description of E&C's oversight record from 1969 to 2018. Scholars would not be able to fully appreciate this development by measuring the number of hearing days devoted by committees to non-legislative hearings. Hence, a virtue of the approach taken in this manuscript is to leverage information in hearing transcripts, which revealed this descriptive finding. Given the vast scope of policymaking authority in the executive branch, much of Congress's job must be bureaucratic oversight. If it is true that is hard for Congress to conduct oversight of the bureaucracy without the bureaucracy, then this manuscript suggests that E&C has been, for some reason, making its job especially hard for many years.

E&C has done less oversight in recent decades. E&C could choose to prepare for, and hold, hearings during which it questions relatively large numbers of agency personnel about the programs and policies under its jurisdiction. It did so to a great extent for roughly a decade between the mid-1970's and the mid/late 1980's. Congressional scholars should be interested in understanding the reason(s) behind this variance in commitment to bureaucratic oversight.

Second, decreases in oversight occurred earlier than scholars may have expected. After the 1994 congressional elections, the new Republican majority cut congressional staff by half. One expectation, then, may be that oversight declined at this time due to fewer resources that could be devoted to it. The figures presented above, though, emphasize that a noticeable drop in oversight occurred well before this reform. Any explanation of why oversight occurs should keep this timing in mind. At least for E&C, it did not occur solely because Republicans were less committed to oversight than previous Democratic majorities. That may or may not be the case.

However, there was a noticeable drop in bureaucratic oversight years before this seismic shift in the electoral landscape.

Third, the decline charted in figures 2-3b occurs across periods of unified and divided government. Prior research on oversight has emphasized that oversight is driven by policy disagreement (McGrath 2013) and hence is more likely to occur during divided government (Parker and Dull 2009), as is the case that agencies receive less discretion to make policy under divided government (Bolton and Thrower 2019; Epstein and O'Halloran 1999; Huber and Shipan 2002). Investigations of wrongdoing in the executive branch, which hurt the president politically, are certainly more likely to occur under divided government (Kriner and Schickler 2016). I view these findings as compelling and correct. Yet, Figure 2 documents that, beginning in the 101<sup>st</sup> Congress (1989-1990), testimony by agency personnel, a substantively and significantly significant predictor of oversight, declined substantially. This trend, beginning in the late 1980's, continued across seven transitions from divided to unified government. Clearly, there is more going on than bureaucratic oversight increasing during divided government and decreasing during unified government. The prevailing trend is a decline in oversight of agencies over decades across unified and divided government. This shift signals a substantial decline in the Committee's commitment to overseeing agencies under its jurisdiction even as it continues to hold non-legislative hearings on policy matters at which fewer and fewer agency personnel testify. Understanding this trend should be a priority for scholars of oversight in conducting future research.

Fourth, there is oversight—and then there is oversight. It is wise to conceptualize the phenomenon broadly, because that is how it is viewed by its practitioners (Bean 2018). Most political science scholarship on oversight, though, contemplates an exercise through which

Congress tries to ensure that executive branch policymaking corresponds to congressional priorities. That much of the non-legislative hearing agenda may involve policing private actors and/or learning about policy challenges and issues is something that scholars who study policymaking in the United States should know. To call hearings, such as those discussed in the “Disrupter Series” above, oversight of the bureaucracy would be more than a stretch, though. It would be a misstatement. The content analysis depicted in Table 1 demonstrates that much of E&C’s non-legislative agenda involved no oversight of agencies whatsoever. Rather, its subcommittees spent time examining policy issues and problems within their jurisdictions. Such work may be characterized as oversight insofar as it promotes the ability of the Committee to act as a “caretaker” (Adler and Wilkerson 2012) within its jurisdiction. However, such hearings are not bureaucratic oversight.

Fifth, the descriptive findings in this manuscript raise questions about what American democracy loses as oversight of the bureaucracy declines. In addition to the obvious answer that elected representatives have less input into agency decisions on behalf of stakeholders and constituents, recent research suggests that oversight can be helpful in promoting effective policymaking. In examining implementation of the Social Security Disability program in the U.S. states, Drolc and Keiser (2021) show that state legislatures with greater capacity for oversight can promote improvements to policy in the wake of poor performance, so long as the capacity of agencies to perform well is sufficiently high. This finding suggests that oversight can be more than simply a mechanism for legislatures to scold, control, or influence agencies. Rather, oversight of the executive branch can be a partnership between lawmakers and bureaucrats committed to crafting and implementing effective policy solutions to improve the

lives of citizens. When Congress devotes less effort to overseeing agencies, the effectiveness of representation, and government, may suffer.

This research also suggests questions for scholars in what it does not study. In focusing on committee hearings, I do not explain oversight that goes on behind the scenes. For example, lawmakers may “backchannel” to agencies to try to influence programmatic decisions on behalf of constituents (Lowande et. al 2019; Ritchie 2018; Ritchie n.d.). It is possible, then, that members may place a greater, or lesser, emphasis on scrutinizing agency decisions in the oversight conducted outside of committee hearings. However, committee staff also spends time outside of hearings to prepare for hearings. MacDonald and McGrath (2016, 915) quote one committee staff director who explained that it took approximately 100 staff hours to prepare for one hour of hearings. This preparation involves oversight, then, and is likely to mirror the purpose of the hearing. In summary, there is substantial oversight that occurs in Congress outside of oversight hearings. Understanding this activity is illusive but it may be as important as distinguishing between hearings that involve scrutiny of agency decisions and those that do not.

Another avenue for future work on committee hearings involves the class of non-legislative hearing in which no scrutiny of agency decisions occurs. In reading opening statements of these hearings, I observed that some hearings involved serious consideration of problems that had a negative effect on the public. For example, one hearing involved understanding the basis for the high costs of automobile insurance, as discussed above. Other hearings along these lines involved focusing the public health effects of pollution. Other hearings devoid of oversight, however, focused more generally on matters of importance to industry, e.g., the “Disrupter Series” referenced above. To what extent do “No Oversight” hearings prioritize investigating economic, public health, and other problems bearing on the interests of the public

at large? To what degree do these hearings promote the interests of business, as research on congressional hearings demonstrates has become prominent in Congress's hearing agenda (Witko et al 2021)?

Finally, the trends documented above may or may not hold when it comes to oversight more generally. It may be the case that E&C's experience was different than that of other committees. On the one hand, Congress's attention to issues can shift over time (Baumgartner and Jones 1993). On the other hand, E&C's jurisdiction is so large (King 1997), and agencies and policies under its purview are so numerous, that the Committee had an opportunity to focus its "watchful eye" throughout the entire period if its membership, and leadership, had desired. That the Committee's eye appears to have become considerably less watchful, then, is probably not due to Congress's agenda. Given that the political forces shaping congressional politics over time have been felt similarly by all House and Senate committees, scholars may wonder whether what I have documented applies more generally.

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