

“I’ll Be the Oversight”: Lessons from the Trump Era

Claire Leavitt
Cornell University

1. Introduction

On December 31, 2019, as the world rung in the beginning of the second decade of the twenty-first century, the Municipal Health Commission in Wuhan, China, reported its first cluster of patients afflicted with a pneumonia-like illness of unknown cause. A little more than two months later, the World Health Organization had officially classified SARS-CoV-2 as a global pandemic, President Trump had declared a national emergency, and Congress had begun debating a \$2 trillion economic stimulus package to support the United States through an unprecedented, prolonged shutdown of economic, commercial and social life. Among other emergency measures, the Coronavirus Aid, Relief and Economic Security (CARES) Act established a \$500 billion relief fund for large businesses, to be managed and distributed by the Treasury Department.

The Democratic majority in the House had delayed passage of the bill to ensure the inclusion of strong oversight provisions, including the establishment of a Special Inspector General for Pandemic Recovery (SIGPR) and a Pandemic Response Accountability Committee (PRAC) within the Council of Inspectors General. Four days before passage of the final bill, at a White House press conference, President Trump accused the Democrats of reneging on a previous agreement and “asking for things that bear no relationship to what we’re talking about...that are actually not good for the country.” Prodded by a reporter that the Democrats’ concerns lay not with the emergency fund

itself but rather with insufficient oversight of Treasury spending, President Trump shot back: “No, no. Look, I’ll be the oversight. I’ll be the oversight. We’re going to make good deals. We make good deals. But these companies need it.”¹

When Trump signed the bill, on March 27, he announced his intention to ignore the new law’s stipulations that PRAC consult with Congress on the appointment of committee members and that SIGPR inform Congress if executive agencies refused to turn over requested information, citing “constitutional concerns.”² In response, Speaker Nancy Pelosi (D-CA) announced that the House would establish a new oversight panel, with subpoena power, to oversee implementation of the CARES Act—in addition to the Covid-19 Congressional Oversight Commission the law established. Her announcement prompted Trump to attack House Democrats for “conducting these partisan investigations in the middle of a pandemic.”³

A few days later, Trump abruptly demoted the Acting Inspector General for the Department of Defense, Glenn A. Fine, who had been selected by his fellow IGs to lead the new pandemic response committee—thus rendering Fine ineligible for the new position. House Oversight and Reform Committee Chair Carolyn Maloney (D-NY) called Trump’s move a “direct insult to the American taxpayer,” and quickly introduced legislation mandating that the new PRAC chair be selected from the current pool of IGs, thus preventing the elevation of a new Trump appointee. Maloney included additional safeguards for IGs in the House version of a second COVID relief bill, though as of December 2020, Congress has not managed to agree on its terms.

The battles over the CARES Act are emblematic of the challenges to its oversight authority Congress faced under President Trump: poorly thought-through attempts to kneecap oversight institutions coupled with rhetorical attacks, bluster and fierce insistence

¹ The White House, 24 March 2020, “Remarks by President Trump, Vice President Pence, and Members of the Coronavirus Task Force in Press Briefing,” <<https://www.whitehouse.gov/briefings-statements/remarks-president-trump-vice-president-pence-members-coronavirus-task-force-press-briefing-9/>>.

² The White House, “Statement by the President,” 27 March 2020, <<https://www.whitehouse.gov/briefings-statements/statement-by-the-president-38/>>.

³ Stolberg, Sheryl Gray and Nicholas Fandos, “From Afar, Congress Moves to Oversee Trump Coronavirus Response,” *New York Times* 16 April 2020, <<https://www.nytimes.com/2020/04/02/us/politics/coronavirus-congress-oversight-trump.html>>.

that any efforts to check his administration’s decisions were motivated by partisanship. During his presidential campaign and in the White House, Trump has consistently attacked democratic norms and institutions (see, e.g., Levitsky and Ziblatt 2018; Dionne, Mann and Ornstein 2018; Acemoglu 2017) and, as the Trump era draws to a close, it’s worth assessing just how significantly his presidency has weakened the institutions and processes designed to check executive power. In this paper, I assess how Congressional oversight has fared under Trump, and extract four primary lessons about the health and status of the process.

I broadly define “oversight” as Congress’ dual ability to keep consistent watch over the administrative state and conduct retroactive investigations of bureaucratic agencies, in addition to other, non-government targets such as private companies and state governments (see Pearson 1975; Kaiser 1988). I argue in this paper that the Trump administration fully illuminated that the process of oversight is not confined to the legislature—rather, its effectiveness depends upon the cooperation and commitment of the other two branches of the federal government. Trump’s efforts to gum up the functionality of the Constitution’s system of checks and balances only underscored the legislature’s comparative institutional weakness: Congress, unable to enforce executive compliance with its requests, relies on the courts to do so, while the judiciary is often reluctant to play mediator in executive-legislative disputes. Prolonged court battles stall meaningful progress on Congressional investigations, rendering the classic tools of oversight less effective.

However, despite these challenges, Congress performed valuable and effective oversight during the Trump administration using its standard toolkit, in part by investigating non-government institutions. The Trump era has also made clear that members may enjoy more ability to constrain the executive through public criticism than through formal institutional action, particularly if the members are presidential co-partisans. While criticism of the president in a public forum does not meet standard definitions of “oversight,” I nevertheless contend that these rhetorical actions meaningfully constrained Trump—a man who is uniquely well-versed in wars of words—in the arena in which presidents exercise the most discretion, foreign policy.

Lesson 1: The More Things Change...

The good news is that, under Trump, Congress was able to conduct meaningful and relevant oversight, capable of inducing or catalyzing change. In the fall of 2019, I spoke with a House staffer who admitted that, while “the tenor does seem ratcheted up under Trump,” Congress’ job hasn’t really changed. As she put it:

Trump’s [behavior] doesn’t change the tools of oversight; it just changes which levers you pull when you’re dealing with an unresponsive branch of government. ... The problem with Trump is that he doesn’t understand the levers of government, but that doesn’t change what we’re doing. It’s still the same tools, and yes, we’ve awakened some other oversight tools that have remained dormant for a while—for instance, inherent contempt is now being talked about, whereas it wasn’t before. Things feel more acrimonious, but not so much more than it was at the end of the Obama Administration. The acrimony in the Obama Administration was over a few issues—the emails over Benghazi, Fast and Furious. But the *volume* of things that have become acrimonious is greater now than it was then.⁴

While recent scholarship suggests that most of Congress’ landmark legislative achievements still require bipartisan support (Curry and Lee 2019), investigative work sometimes garners but certainly does not demand the same. The investigative process, unlike lawmaking, is not formally pluralistic, nor does it require consensus-building; launching an investigation against a high-ranking administration official requires only the will of the committee chair and, in most cases, the sanction of the party leadership. Consultation with the minority on an investigative agenda is a mere privilege extended by a magnanimous committee chair, and has become particularly rare in the House.

And yet bipartisan collaboration under the Trump administration wasn’t completely stamped out: the House Foreign Affairs committee, for instance, won accolades for its effective and unshowy investigative work that permitted substantive collaboration with the minority.⁵ In the Senate, the Permanent Subcommittee on Investigations (PSI),

⁴ Personal Interview, November 3, 2019.

⁵ Andrew Desiderio, “The House committee quietly racking up oversight wins against Trump,” *Politico*, 17 June 2019, <<https://www.politico.com/story/2019/06/17/house-foreign-affairs-paneloversight-trump-1365840>>.

Table 1: House Oversight Committee Investigative Priorities, 2017-2019

	115th Congress (2017-2018)	116th Congress (2019)
No. Hearings	67 (2017); 58 (2018)	76*
Issue Addressed (2 times)	Free speech on college campuses; moving the American embassy from Tel Aviv to Jerusalem; nuclear agreement with Iran; the state of illegal immigration; waste and fraud in the Supplemental Nutrition Assistance Program (SNAP); use of “official time” for union activities; the state of federal information technology; Bureau of Prisons management challenges; IRS management challenges; agency compliance with the Federal Information Technology Acquisition Reform Act (FITARA)	US policy in Afghanistan; Trump admin. violations of the Hatch Act; voting rights and election infrastructure; military suicides; carcinogens in consumer products agency compliance with the Federal Information Technology Acquisition Reform Act (FITARA)
Issue Addressed (3 times)	Response to/recovery from 2017 hurricane season; preparation for the 2020 Census; excessive litigation by environmental groups; uses and challenges of artificial intelligence; TSA management challenges; implementation of deregulatory executive orders	Combatting white supremacy; uses and possible abuses of facial recognition technology; high prescription drug prices; opioid crisis and national drug prevention strategy
Issue Addressed (4 times)	Opioid crisis and national drug prevention strategy	US Census (incl. addition of citizenship question); child separation at immigration detention facilities; PFAS chemicals; e-cigarette epidemic and dangers of vaping
Issue Addressed (5 times)	—	Climate change effects and mitigation
Shared Hearing Topics (across congresses)	Improving management of the DC Metro; opioid crisis and national drug prevention strategy; preparations for the 2020 Census; uses and possible abuses of facial recognition technology; TSA management challenges; agency compliance with the Federal Information Technology Acquisition Reform Act (FITARA); response to/recovery from 2017 hurricane season; domestic terrorism; US Postal Service reform; nuclear waste management; GAO list of high-risk programs; US policy in Afghanistan	

* Committee’s hearing schedule was affected by the illness and subsequent death of Chairman Elijah E. Cummings (D-MD) in September and October 2019

which began in 1941 as the Truman Committee and is the Senate’s primary investigative panel under the aegis of the Homeland Security and Government Affairs Committee, conducts thoroughly bipartisan work: though the majority and minority staffs retain separate offices, they work together closely, and from 2017-2019 all but one of the staff reports issued by the Subcommittee were bipartisan.

Contemporary examples of cross-party collaboration are noteworthy precisely

because they are uncommon. However, segregated majority and minority oversight agendas also exhibit a surprising degree of correspondence. Table 1 lays out the investigative priorities of the House Committee on Oversight and Reform for the 115th Congress, when Republicans were in the majority, versus the first year of the 116th Congress, when Democrats controlled the gavels. While all committees in the House are empowered to conduct oversight, Oversight and Reform is the only House panel dedicated almost exclusively to investigations, with minimal legislative jurisdiction.⁶ Its investigative jurisdiction, by contrast, is unlimited and independent of all other standing committees: House Rule X endows the Oversight and Reform Committee to “at any time conduct investigations of any matter without regard to [previous clauses’] conferring jurisdiction over the matter to another standing committee.”⁷

In other words, the committee sets its agenda free of constraints, and is thus an apt picture of the investigative priorities of a given Congress. Despite the acrimony on what a Senate staffer told me was “by far the most partisan committee in the House,”⁸ the parties overlapped on twelve issues that merited either full or subcommittee-level inquiries.

The most obvious difference between the two congresses’ oversight agenda is, unsurprisingly, the focus (or lack thereof) on Trump Administration decisions. Oversight and Reform conducted virtually no scrutiny of the administration in the 115th Congress, holding only four Trump-focused hearings in 2017 and four in 2018. In 2017, the Committee held hearings on Trump’s border wall proposal, the federal response to the opioid crisis and the decision to relocate the American Embassy in Israel from Tel Aviv to Jerusalem; in 2018, the Committee examined Trump’s agency management agenda as well as the administration’s strategy to defeat ISIS, its immigration policy, and its continuing response to the drug crisis. Only three times throughout the 115th Congress was Trump or the administration mentioned in a hearing title—a reliable indicator of a

⁶ The Committee’s legislative jurisdiction includes federal workforce issues, the Census, the Post Office and the National Archives, among others.

⁷ House Committee on Oversight and Reform, “Committee Jurisdiction,” <<https://oversight.house.gov/about/committee-jurisdiction>>.

⁸ Personal interview, October 25, 2019.

hearing's focus, since hearing titles are released prior to the events themselves and often determine the extent of media coverage. In 2019, by contrast, Committee Democrats held 20 hearings targeting the administration, on the separation of children from their parents at immigration detention facilities, the president's decision to withdraw American troops from Syria, and the administration's ethics failures (which included highly anticipated testimony from Trump's former lawyer, Michael Cohen), among others.

A corpus of oversight literature confirms that Congress conducts more investigations of the executive branch under divided than under united government (Mayhew 2005; Kriner and Schwartz 2008; Parker and Dull 2009), in part because investigations can significantly depress presidential approval ratings (Kriner 2009, 2010; Kriner and Schickler 2014, 2016). Thus, it may be disheartening but not particularly surprising that Republicans in the 115th Congress shied away from consistently holding the new president's feet to the fire. However, the unique nature of Trump's candidacy and the perceived threats he posed to democratic institutions even before he took office make it difficult to draw inferences about why Oversight Committee Republicans chose to let their president alone. Does the committee's lack of focus on Trump administration decisions reflect the same political incentives present during other instances of unified government, or did Republicans go unusually easy on Trump, perhaps out of fear or genuine ideological fealty?

To answer this question, I compiled an original data set of all House and Senate oversight hearings throughout the first three years of both the Obama administration (2009-2011) and the Trump administration (2017-2019), to which I refer throughout this paper. Comparing oversight activity during President Trump's administration directly to President Obama's is useful for two reasons. First, this comparison controls for the effect of partisan polarization on oversight (see Lee 2015): polarization in Congress has worsened only slightly from 2009-2011 to 2017-2019.⁹ Second, President Obama, like

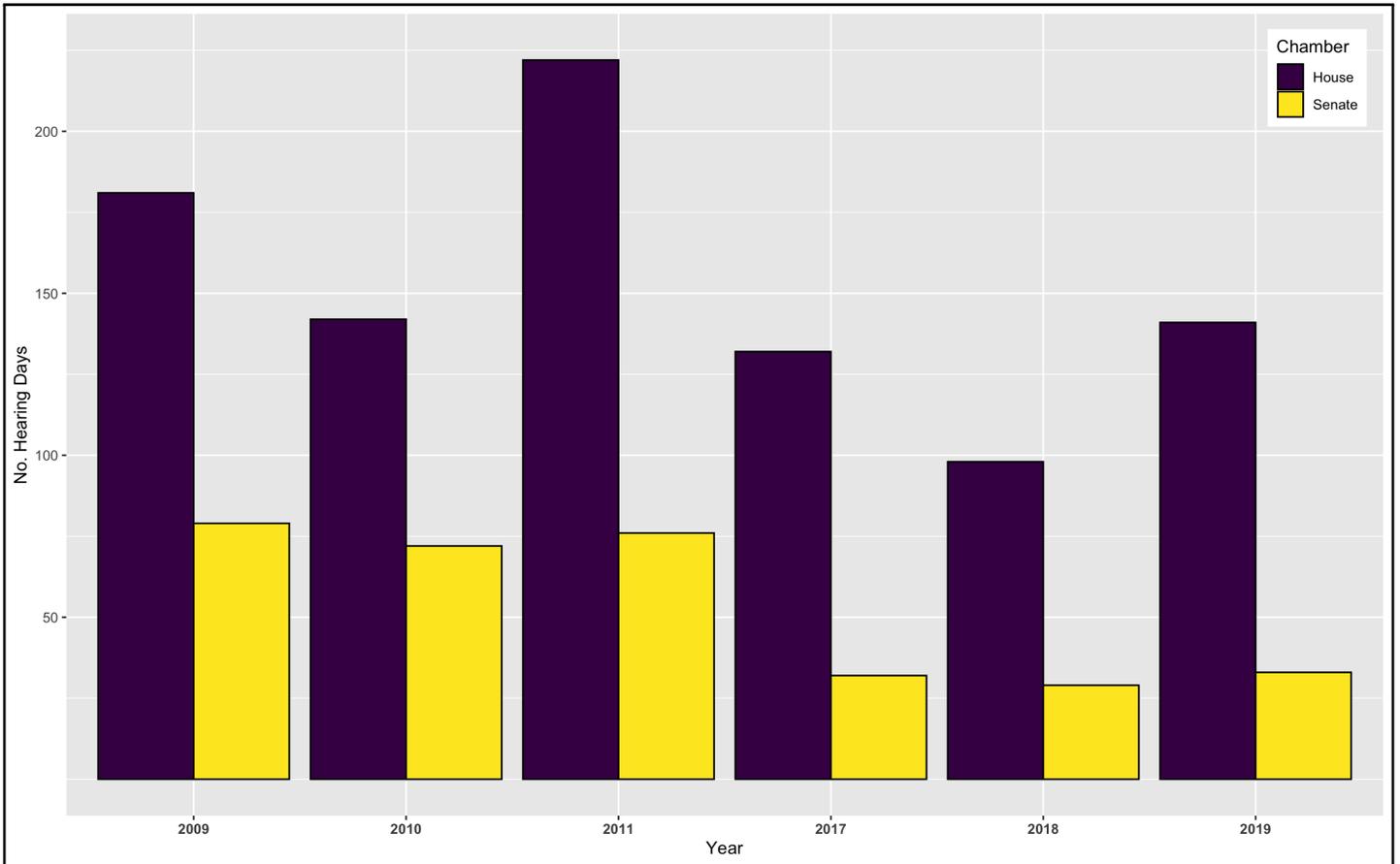
⁹ I measure polarization in a given Congress as the absolute value of the difference between the median first-dimension DW-NOMINATE score for the Democratic party and the median first-dimension DW-NOMINATE score for the Republican party, across both chambers. In the 111th Congress, partisan polarization was .77, jumping to .84 in the 112th Congress. In the 115th Congress, polarization is measured as .89, and for the 116th Congress as .91 as of this writing. Further analysis is required to assess whether the small difference in partisan polarization between the early Obama years versus the early Trump years is a significant predictor of oversight activity in Congress, but for the purposes of this paper, I assume that the effect of polarization is constant across both administrations.

President Trump, began his first term under wholly unified government—both the House and Senate were controlled by the president’s party—and then watched as his party lost the House in the midterm elections while retaining control in the Senate. These identical partisan conditions make the first terms of Obama and Trump uniquely suited for comparison. Because of the effect of the COVID-19 pandemic on Congressional activity in the second year of the 116th Congress, I limit my comparison to the first three years of Obama’s and Trump’s first terms, respectively: 2009-2011 and 2017-2019.

I expanded my data set beyond the House Oversight Committee to include all hearings, in both chambers, convened by a standing panel explicitly devoted to oversight: In the 111th Congress (2009-2010), for instance, there were 17 standing committees and subcommittees in the House that included their oversight jurisdiction in their names, and 10 in the Senate. (See Appendix I for a full list of the panels from which data were collected.) The subset of hearings held by committees with explicit oversight jurisdictions (to which I will refer hereafter as “oversight panels”) do not encompass all oversight hearings conducted in a given year; however, they do represent the routine, institutionalized oversight performed in Congress by panels that have been established for the primary purpose of oversight—as opposed to legislative—work.

After collecting all of the hearings held by oversight panels in both the House and Senate, for the first three years of the Obama and Trump administrations, respectively, I eliminated all hearings that focused solely on legislation, including resolutions; however, I chose to include all hearings that focused on the current administration’s budget requests. From this winnowed subset of oversight hearings, I collected information on the number and types of witnesses at each hearing and coded each hearing according to its investigative target, distinguishing between hearings that focused on administration decisions; on non-governmental or private entities; on audits or reports issued by government watchdogs, which I defined as the Government Accountability Office (GAO), agency Offices of Inspectors General (OIG) and the Congressional Research Service (CRS); on state or local governments; and on agency implementation of laws and programs, in which Congress “checks in” on laws or programs in the executive branch but does not investigate either a

Figure 1: Number of Oversight Hearing Days, 2009-2011 vs. 2017-2019



Source: Claire Leavitt, 2020; original data set compiled using ProQuest CongressionalTM

specific ethical/legal violation or a new policy/rule.

Figure 1 shows similar patterns across both administrations, in terms of the raw number of oversight hearings: House hearings increase significantly in 2011 after Republicans regained control of the chamber, compared with both 2009 and 2010; similarly, House hearings spiked in 2019 under the new Democratic majority relative to 2017 and 2018 under Republican control. In the Senate, by contrast, the number of hearings remain relatively constant throughout each three-year period, reflecting the continued control of the chamber by the president's party. These patterns support the idea that Congressional Republicans behaved according to the expected incentives to go easy on the president under unified government, and did not appear to be motivated by variables unique to the Trump administration, such as fear of retribution for investigations. In other words, under an unprecedented president, oversight patterns in Congress throughout 2017-2019

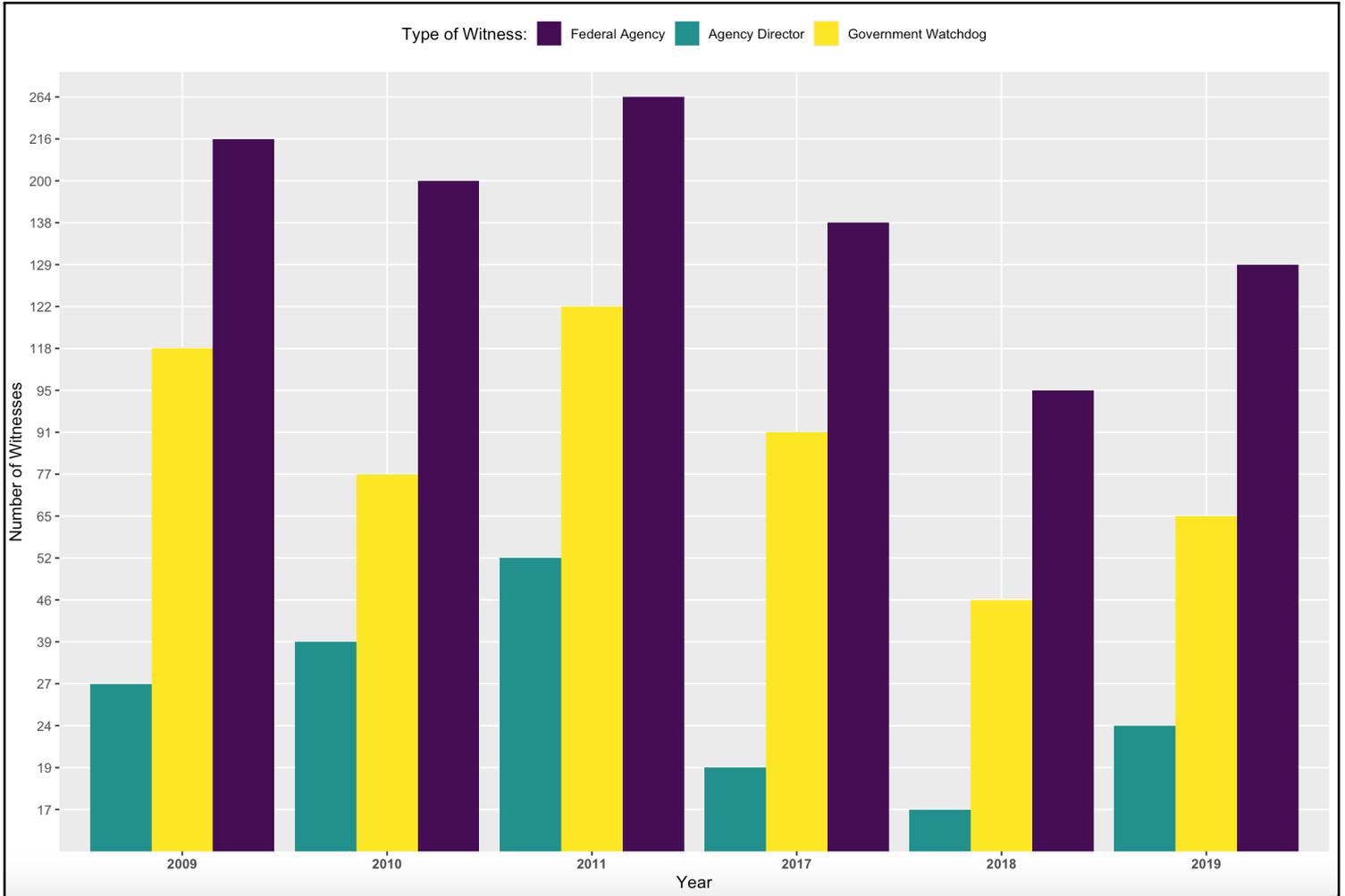
appeared to reflect business as usual.

However, Figure 1 also makes clear that both parties simply perform less oversight now than they did just several years ago. The number of oversight hearings in both the House and Senate declined precipitously from the early Obama years to the early Trump years: In the 111th Congress (2009-2010), Democrats under unified government held an average of 161.5 oversight hearings in the House and 76 hearings in the Senate, while House Republicans in the first year of the 112th Congress (2011) held 213 hearings and Senate Democrats 80. Fast-forward to the 115th Congress (2017-2018), and Republicans under unified government held an average of just 115 hearings in the House and 30.5 in the Senate; after regaining control of the House in 2019, under an administration Democrats called uniquely dangerous, just 141 hearings were convened in the 116th House. (The 116th Senate, under Republican control, held 33.) This paper does not offer a hypothesis about this observed drop in oversight activity within the span of a single decade, but the similarly high levels of polarization across both administrations seem to indicate a non-partisan explanation.

Figures 2 and 3 display the raw number of three different types of witnesses who testified at all House and Senate oversight hearings in 2009-2011 versus 2017-2019. The number of agency witnesses, as well as the number of witnesses who served as agency directors, are both proxies for measuring the overall responsiveness of the Obama and Trump administrations to Congressional requests for witnesses—though, importantly, this data does not distinguish between witnesses who appeared under subpoena and witnesses who testified voluntarily. The number of witnesses representing government watchdog agencies—which I limit to the the GAO, agency Offices of Inspectors General and CRS—illustrates Congress’ commitment in a given year to providing non-partisan testimony from experts with no incentive for partisan position-taking. The data show that the two parties do not differ significantly in their willingness to provide non-partisan testimony at hearings—a heartening result in a political era in which Republicans in particular are often accused of dismissing expert opinion in favor of partisan agitators.

However, witnesses from government watchdog agencies will almost always ap-

Figure 2: Number of Witnesses at Oversight Hearings
House of Representatives, 2009-2011 vs. 2017-2019

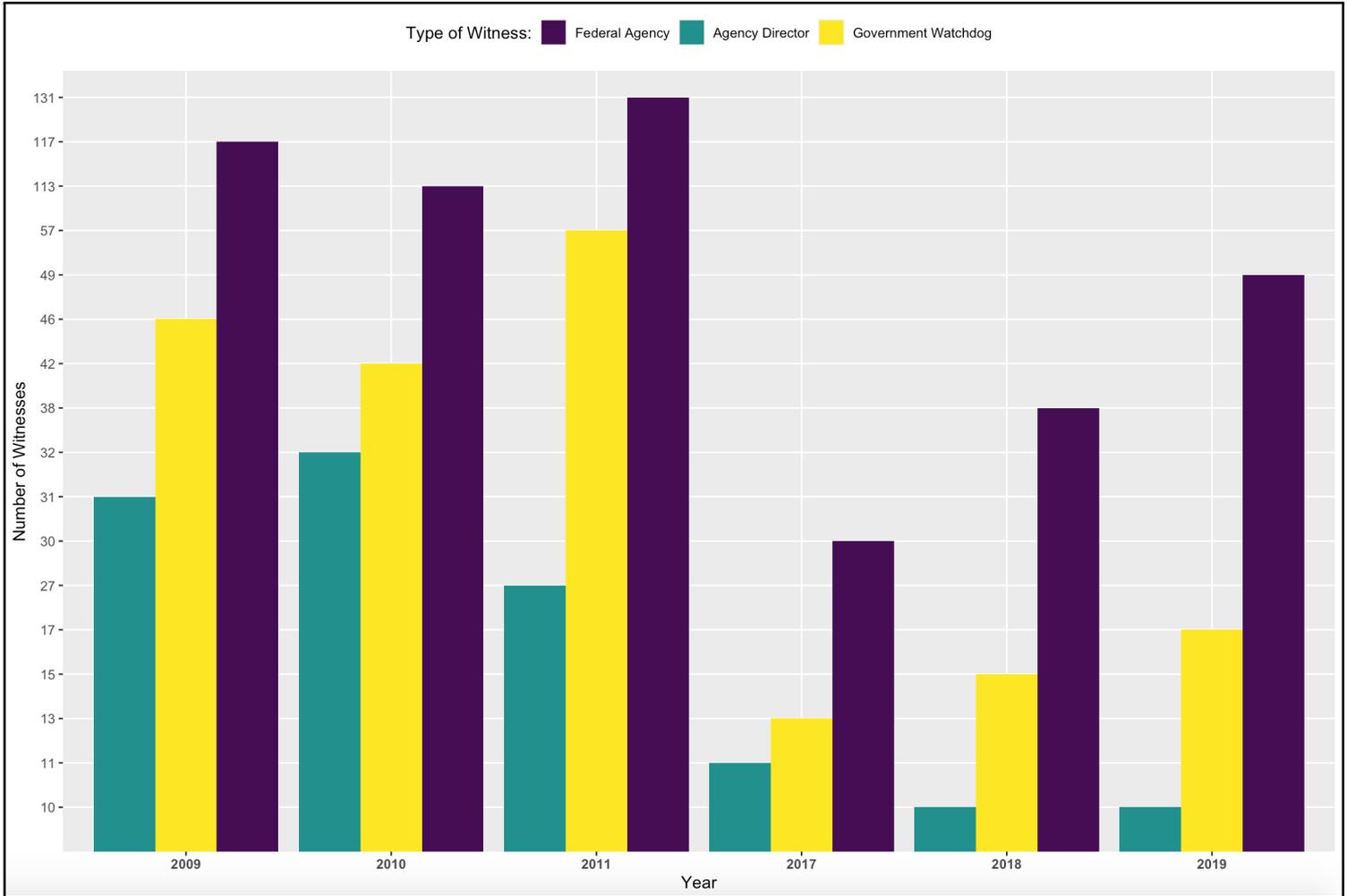


Source: Claire Leavitt, 2020; original data set compiled using ProQuest Congressional™

pear when requested by Congress. The presence of agency witnesses, on the other hand, depends on the willingness of the administration to provide them. Under Obama, after the switch from unified to divided government in the House, the number of agency witnesses increased slightly, though not quite in pace with the spike in overall hearings (see Figure 1), and the number of director-level witnesses increased from an average of 33 in 2009- 2010 to 52 in 2011.

Under Trump, agency witnesses at House oversight hearings in 2019, under a new Democratic majority, actually decreased slightly compared with 2017 under a Republican majority. The number of director-level witnesses increased from an average of 18 under Republican control to 24 in the first year of Democratic control, but this increased

Figure 3: Number of Witnesses at Oversight Hearings, Senate
2009-2011 versus 2017-2019



Source: Claire Leavitt, 2020; original data set compiled using ProQuest CongressionalTM

presence of agency directors at congressional hearings does not reflect increase in overall oversight activity in the 116th Congress. In other words, the Trump administration was slightly less responsive to House Democrats than the Obama administration was to House Republicans. The spike in director-level witnesses after partisan shifts under both administrations, however, indicate a similarity in responsiveness patterns that somewhat dilutes the substantive significance of the dip in overall responsiveness to Democrats under Trump.

The decrease in the number of all witnesses from 2009-2011 to 2017-2019 is likely attributable to the overall decline in oversight activity from the early years of Obama to the early years of Trump rather than to Trump-specific factors. In other words, Trump's

presence in the White House does not appear to have significantly changed the way the oversight engines grind. Under both administrations, a switch from unified to divided government prompted an increase in both hearings and the number of prominent witnesses, as expected, while both parties appeared to rely on non-partisan testimony in equal stead. While the overall quantity of oversight has dropped, the patterns across administrations are remarkably similar, particularly in terms of the *number of hearing days*: a slight drop in hearings from the first year of unified government to the second (attributable to the fact that members spend less time in Washington during election years), followed by a significant spike in House activity as partisan control shifts and no discernible change in the Senate as partisan control remains unchanged.

These data do not diminish the importance of Trump's unprecedented refusal to comply with Congressional subpoenas, which I discuss in detail in Lesson 3, but they do show that Trump's presence in the White House hasn't shattered the institution of oversight—not even close. Donald Trump may not be like any other president, but Congress' oversight tools do not reflect this perception. Apart from highly salient inter-branch battles, the basics of oversight—the proverbial engine gears of patrolling the executive branch, investigating allegations of abuse in the administrative state and hearing from expert witnesses—have not been upended under Trump.

Lesson 2: Trump is not the center of the investigative universe

Much of the extant oversight literature focuses on investigations of the presidency or the administrative state and virtually ignores a valuable subset of Congressional investigative work—oversight of non-government entities, which include private for-profit companies as well as not-for-profit organizations such as universities and advocacy groups. And yet investigations of these institutions have provided some of the most famous moments in Congressional history: seven tobacco executives collectively denying the addictive properties of nicotine in 1994; baseball player Mark McGwire equivocating over whether he had ever used performance-enhancing drugs in 2005; or Facebook chief exec-

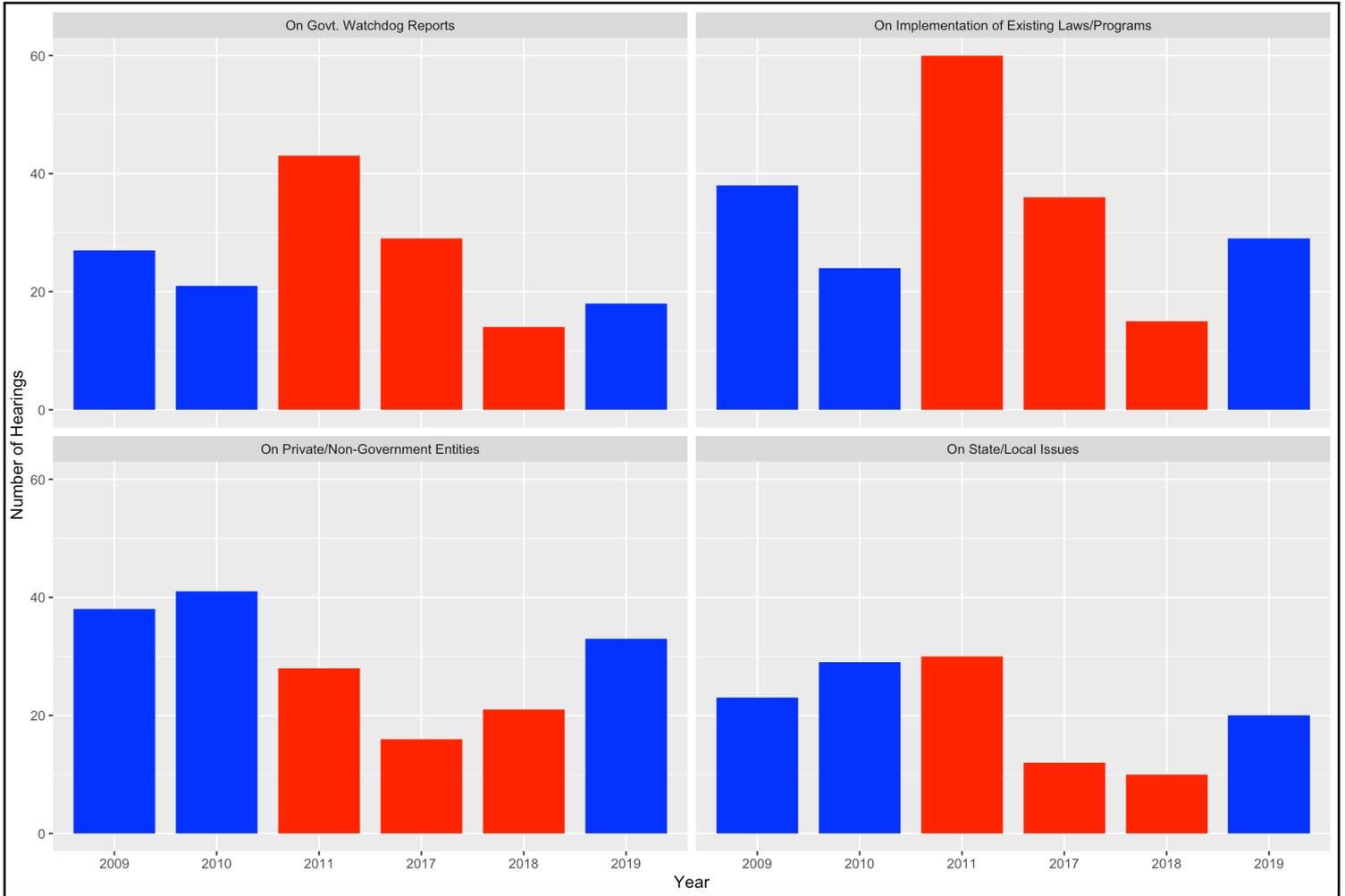
utive Mark Zuckerberg making his first appearance before Congress in 2018 to address user privacy and harvesting of personal data by outside platforms.

In an era in which the Trump Administration has made it a policy to resist subpoenas from Congress, members of Congress can still consistently extract the information they need, when they need it, from non-government entities. Private companies almost always comply with Congress' requests for information or testimony; defiance of a subpoena would not only threaten the company's reputation (and hence its share price) but there is also no private-sector equivalent of executive privilege nor an abundance of CEOs willing to risk being held in contempt. Former chairman of the House Oversight and Government Reform Committee Henry Waxman (D-CA) claims that "in all the years I spent investigating the tobacco industry—masters of obstruction and refusal to cooperate—never once did I have to issue a subpoena to obtain information" (Waxman 2009).

In the Trump era, while the norms surrounding oversight of the executive branch have shifted, oversight of the private sector remains essentially intact. The process is certainly vulnerable to partisan acrimony, and private targets of investigations may still delay and obfuscate within the confines of the law but, ultimately, documents are turned over, executives show up at hearings, and a committee's investigation is often able to paint a thorough and convincing narrative of malfeasance—often one vivid enough to induce policy change from corporations.

In the 116th Congress, House Democrats devoted almost a quarter of their investigative agenda (23.4%) to non-government entities, convening hearings on the exorbitant cost of prescription drugs, price gouging by defense contractors and environmental pollution by industrial manufacturers, among other issues. Figures 4 and 5 present the targets of all oversight hearings in the House and Senate, respectively, in the early years of both the Obama and the Trump administrations. The figures present the raw numbers of hearings across administrations that responded to reports or audits issued by either the GAO or agency inspectors general; executive implementation of laws and programs; issues affecting state and local levels of government; and the behavior of non-government entities.

Figure 4: Targets of Oversight Hearings
House of Representatives, 2009-2011 vs. 2017-2019



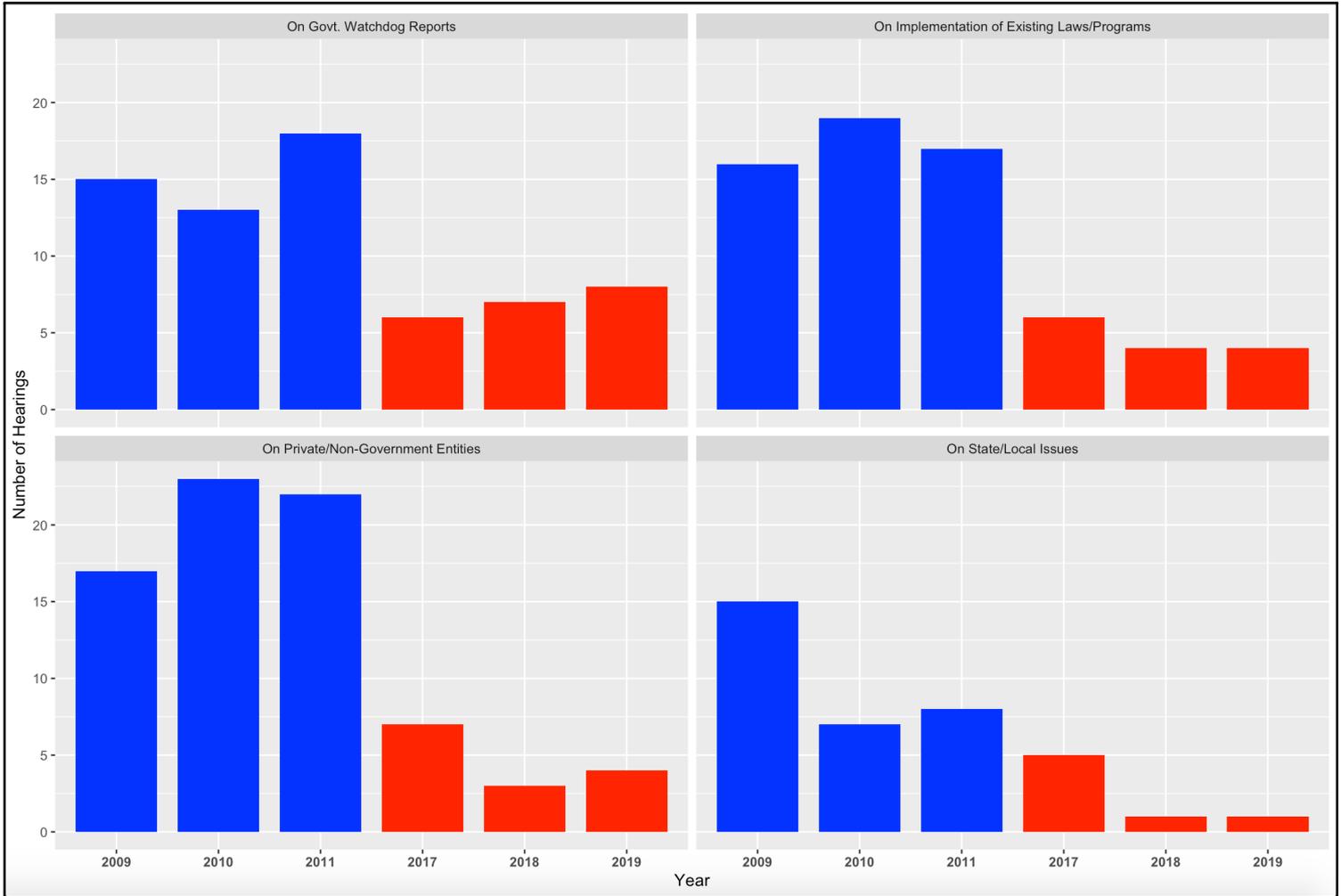
Source: Claire Leavitt, 2020; original data set compiled using ProQuest Congressional™

Only on investigations of the non-government sector do House Democrats consistently outperform House Republicans, in both the Obama and the Trump administrations. Measured as a proportion of *all* hearings, House Democrats devoted a significantly greater share of their agenda to non-government oversight in the first year of the 116th Congress (23.4% of all hearings) than did House Republicans in the first year of the 115th Congress (12.1%).¹⁰ Similarly, House Democrats in the first year of the 111th Congress focused 21% of their oversight agenda on non-government entities, a significantly greater share than that of House Republicans in the first year of the 112th Congress (13.1%).¹¹

¹⁰ Using a two-proportion chi-square test, the proportional difference is significant at the .05 level.

¹¹ Using a two-proportion chi-square test, the proportional difference is significant at the .001 level.

Figure 5: Targets of Oversight Hearings
Senate, 2009-2011 vs. 2017-2019



Source: Claire Leavitt, 2020; original data set compiled using ProQuest Congressional™

In the Senate, the results are the same across administrations: Senate Democrats from 2009-2011 not only held more hearings on the non-government sector than did Senate Republicans in 2017-2019 but these hearings also constituted a significantly greater share of the Senate Democrats' agenda (26.7% of all hearings held from 2009-2011) than the Senate Republicans' (14.9% of all hearings held from 2017-2019).¹² However, given the smaller sample size of hearings in the Senate versus the House, the proportional difference between Senate Democrats and Republicans is less reliable an indicator of oversight preferences.

The Democrats' greater level of attention to non-government entities can perhaps

¹² Using a two-proportion chi-square test, the proportional difference is significant at the .05 level.

be explained by differences in ideology alone—we might expect Republicans to focus more attention on malfeasance in the public sector than in private industry. However, after gaining subpoena power over the Trump administration in the 2018 midterm elections, Democratic leaders emphasized their intention to devote more resources toward investigations of the *private* sector. At the beginning of the 116th Congress, the committee formerly known as Oversight and Government Reform dropped the “Government” from its title; the Committee’s new chairman, Rep. Elijah E. Cummings (D-MD), maintained that the new name “better reflect[s] our true jurisdiction, which covers both government and the private sector.”¹³ The name change coupled with Oversight and Reform’s first hearing of the new congress, on the skyrocketing cost of prescription drugs, made clear that the Democrats’ oversight priorities would by no means be Trump-centric.

One of the House Oversight and Reform Committee’s most effective investigations, of either the private or public sector, began in January 2019, when the Department of Defense’s (DOD) Inspector General (IG) released a report identifying excess profits by a company named TransDigm, a private defense contractor that provides spare parts for military aircraft. The report, requested by a Democratic committee member two years prior, found that “TransDigm earned \$16.1 million in excess profit on 46 of the 47 parts it sold to the Defense Logistics Agency and the Army for \$26.2 million between January 2015 and January 2017,” with profit percentages ranging from 17% to 4,451% for said parts.¹⁴ The IG recommended that TransDigm repay the \$16.1 million to DOD, though the company was not obligated to do so under current law. On May 7, 2019, TransDigm informed the Oversight Committee that it had “not yet determined whether [the company] will make a voluntary refund.”¹⁵ The company’s equivocation made financial sense: Despite the IG report’s revelations, in the three months after the report’s release,

¹³ House Committee on Oversight and Reform, “Oversight Committee Gets New Name,” Press Release, 2 January 2019, <<https://oversight.house.gov/news/press-releases/oversight-committee-gets-new-name>>.

¹⁴ Office of the Inspector General, Department of Defense, “Review of Parts Purchased From TransDigm Group, Inc.,” Report No. DODIG-2019-060, 25 February 2019, <<https://media.defense.gov/2019/Feb/27/2002093922/-1/-1/1/DODIG-2019-060.PDF>>.

¹⁵ House Committee on Oversight and Reform, “Supplemental Memorandum on Actions by TransDigm,” Memorandum, 15 May 2019, <<https://oversight.house.gov/news/press-releases/committee-releases-new-information-on-defense-contractor-s-extreme-profit>>.

TransDigm's stock increased by approximately six percent.¹⁶

On May 15, the full Oversight Committee convened a hearing at which the DOD IG and the current and former CEOs of TransDigm were invited to appear. At the hearing, after listening to both executives stonewall over multiple members' requests to return the funds to the Treasury, Rep. Ro Khanna (D-CA), who had originally called for the IG investigation in March 2017, offered the company a "free bit of advice: You've got a bipartisan Congress saying you should pay back the \$16 million you owe the taxpayers. We in Congress can agree on almost nothing, and it's remarkable that we agree on this. ...The big risk is that Fox and Friends will cover this and you'll have a presidential tweet asking you to pay back the money, so before we get to that... the company's worth \$1.2 billion. Why not just pay back the \$16 million?"

Nine days later, TransDigm announced it would repay the full amount per the IG's recommendations. In an unusual decision targeting not a specific industry but rather a specific *company*, DOD promptly issued a directive requiring TransDigm, and TransDigm only, to provide cost data to justify the prices it charged the government for its future sole-source contracts. Oversight and Reform Chairman Cummings attributed TransDigm's change of heart to his Committee's investigation, calling the inquiry "solid bread-and-butter oversight that helps our troops and the American taxpayers. We saved more money today for the American people than our Committee's entire budget for the year."¹⁷

The TransDigm investigation represents the kind of oversight that Congress still does well: the investigation commanded bipartisan support, was based on credible findings from a non-partisan agency watchdog (and supplemented by the Committee's own investigative work),¹⁸ and was able to garner enough public attention to incite a volun-

¹⁶ Aaron Gregg, "Military parts supplier TransDigm draws scrutiny over prices," *Washington Post*, 19 June 2019, <<https://www.washingtonpost.com/business/2019/06/08/military-parts-supplier-transdigm-draws-scrutiny-over-prices/>>.

¹⁷ House Committee on Oversight and Reform, "TransDigm To Refund \$16 Million to DOD as a Result of Committee Investigation," Press Release, 24 May 2019, <<https://oversight.house.gov/news/press-releases/transdigm-to-refund-161-million-to-dod-as-a-result-of-committee-investigation>>.

¹⁸ House Committee on Oversight and Reform, "Supplemental Memorandum on Actions by TransDigm," Memorandum, 15 May 2019, <<https://oversight.house.gov/news/press-releases/committee-releases-new-information-on-defense-contractor-s-extreme-profit>>.

tary recompense from a private company, in part by turning one of President Trump's liabilities, his Twitter account, into an advantage. The inquiry also demonstrates the ability of Congress to elevate issues that otherwise might have slipped under the radar and permitted companies to dodge accountability. TransDigm was first accused of price gouging in 2006, in a DOD IG report, to the tune of \$5 million in excess profits.¹⁹ As in 2019, the agency watchdog recommended TransDigm voluntarily refund the money, but the company never did. That TransDigm made a different choice in 2019 than in 2006 is a testament to Congress' ability to harness democratic outrage to induce its desired policy outcomes in a way that agency watchdogs simply cannot. While shame has not always been a viable weapon against a Trump-led executive branch, it is still an effective tool against private sector abuses.

As mentioned, oversight of the private sector has remained effective in the Trump era due to the expectation of cooperation from the investigative targets. However, even private-sector oversight has not managed to fully avoid the effects of partisan polarization and heightened animosity. For example, Elijah Cummings had been clear that one of his first actions as the new chairman of the House Oversight and Reform Committee would be to launch an investigation into the rising cost of prescription drugs, particularly brand-name medications without generic equivalents, such as insulin and the HIV pre-exposure prophylaxis Truvada. Cummings held the committee's first hearing of the 116th Congress on prescription drug costs, and that same month unveiled legislation with Sen. Bernie Sanders (I-VT) that would reduce drug prices in the United States by, among other proposals, eliminating restrictions on the importation of prescription drugs from Canada.

During the 2016 presidential campaign, Trump had frequently cited expensive prescription drugs as a problem he was willing to tackle, and Chairman Cummings met with Trump in March 2017 to discuss how they might work together on the issue. "He knew that this was about saving people's lives and making it possible for people to keep more

¹⁹ Office of the Inspector General, Department of Defense, "Spare Parts Procurements From TransDigm, Inc.," Report No. D-2006-055, 23 February 2006, <<https://media.defense.gov/2018/Oct/10/2002049899/-1/-1/1/D-2006-055.PDF>>.

money in their pocketbooks,” Cummings said after the meeting. “He was very aware of this prescription drug issue, almost every aspect of it.”²⁰ That same day, Trump tweeted that he was working on a “new system” to increase competition in the pharmaceutical industry. In May of 2018, the administration unveiled a tepid plan to increase competition and reduce prices by, among other proposed reforms, increasing drug price transparency for Medicare recipients and giving Medicare Part D plans more leeway to negotiate with drug companies.²¹ However, drug prices continued to rise despite Trump’s promises of reform.

Despite the president’s eagerness and amenability on the issue, the House Oversight Committee’s investigation fell prey to partisan conflict from the outset, due in large part to the Republicans’ choice to elevate Rep. Jim Jordan (R-OH), a notoriously combative founding member of the House Freedom Caucus whom former Republican House Speaker and fellow Ohioan John Boehner has described as a “legislative terrorist.”²² After the Democratic majority requested documents from twelve pharmaceutical companies as part of its broad investigation into drug prices, Jordan and the ranking member on the Government Operations subcommittee, Rep. Mark Meadows (R-NC), sent their own letters to the companies, claiming that Cummings did not consult the minority before he launched the investigation and accusing Cummings of playing partisan politics. “In light of Chairman Cummings’ recent boast that his investigation has affected pharmaceutical ‘stock prices,’” the members wrote, “we believe the Committee should not pursue an investigation to ‘impact...stock prices with regard to drugs.’”²³ The letter was widely viewed as urging the drug companies not to cooperate with the Committee’s investigation.

²⁰ Kevin Liptak, Deirdre Walsh and Dan Merica, “Cummings, Trump find common ground on need for drug pricing reforms,” *CNN*, 8 March 2017 <<https://www.cnn.com/2017/03/08/politics/elijah-cummings-donald-trump-prescription-drug-pricing/index.html>>.

²¹ The White House, “President Donald J. Trump’s Blueprint To Lower Drug Prices,” Fact Sheet, 11 May 2018, <<https://www.whitehouse.gov/briefings-statements/president-donald-j-trumps-blueprint-lower-drug-prices/>>.

²² Tim Alberta, “John Boehner Unchained,” *Politico Magazine*, November/December 2017, <<https://www.politico.com/magazine/story/2017/10/29/john-boehner-trump-house-republican-party-retirement-profile-feature-215741>>.

²³ House Committee on Oversight and Reform, Minority Staff, Letter from Reps. Jim Jordan (R-OH) and Mark Meadows (R-NC), 5 April 2019, <<https://republicans-oversight.house.gov/wp-content/uploads/2019/04/Pharma-Letters.pdf>>.

Jordan and Meadows’ attempted obstruction of the majority’s investigation indicated that Republicans intended to fight a war against the new majority on all fronts, urging private companies to adopt the strategy that President Trump later embraced: refusing to comply with Congressional investigations based on a belief that the inquiry is illegitimate or “partisan.” And yet, in marked contrast to the Trump-led executive branch, the drug companies complied with the Committee’s investigation.²⁴ Throughout 2019, the Committee held four hearings, sent 21 letters and issued an in-depth staff report on the prescription drug crisis in which the Committee laid out the inadequacy of the Trump Administration’s response. The Committee’s relentless focus on the issue, in tandem with Trump’s renewed attention and his State of the Union pledge to end the HIV epidemic by 2030, effected significant legislative and regulatory changes as well as voluntary action from drug manufacturers themselves.

In May 2019, the Trump Administration announced that Gilead Sciences, which holds the patent for Truvada and whose CEO testified before the Oversight Committee that same month, would donate medication for 200,000 people per year until the release of a generic version. (Only a day earlier, Gilead had announced that a generic version of Truvada would be available in the fall of 2020, which considerably curtails the extent of the company’s generosity.) In November, three pharmaceutical companies announced that they would begin offering generic insulin at half the price, and in December, the Food and Drug Administration (FDA) proposed a rule facilitating the importation of certain prescription drugs from Canada.²⁵ Also in December, the House passed the Elijah E. Cummings Lower Drug Costs Now Act, which set caps on out-of-pocket drug costs for Medicare recipients and empowered the Department of Health and Human Services (HHS) to negotiate directly with pharmaceutical companies on approximately 250 types of drugs, including insulin. Trump vowed to veto the Democratic bill, arguing that it

²⁴ Susan Ferrechio, “Bitter fight brews between Cummings and Jordan over drug pricing investigation,” *Washington Examiner*, 17 April 2019, <<https://www.washingtonexaminer.com/news/congress/bitter-fight-between-cummings-and-jordan-brews-over-drug-pricing-probe>>.

²⁵ Katie Thomas, “Trump Administration Takes First Step to Allow Drug Imports From Canada,” *New York Times*, 18 December 2019, <<https://www.nytimes.com/2019/12/18/health/drug-prices-imports-canada.html>>.

“effectively impose[d] price controls on manufacturers,”²⁶ while endorsing the bipartisan Senate alternative that did not include the negotiation provision.²⁷

Oversight of the private sector has worked in the Trump era because the old rules haven’t changed: When investigative targets cooperate, Congress is able to expose new information to the American people that, in turn, propels legislative action and pressures private companies to amend their business practices and policies going forward. It’s worth mentioning that while oversight of non-government entities often spurs regulatory changes as well, the president’s unique penchant for about-faces on his decisions limits Congress’ ability to influence administrative policymaking under Trump.

For one instance, in July 2019, Trump abruptly withdrew a proposed rule that would have reduced prescription drug prices for consumers by eliminating drug-company rebates to private insurers, after having publicly touted the proposal a year earlier as part of his larger plan to combat prescription drug prices.²⁸ For another, in September 2019, after committees in both the House and Senate launched investigations into e-cigarette manufacturers, Trump announced he would work to ban the sale of flavored e-cigarettes, then cancelled the policy’s formal rollout in November.²⁹ The Trump administration’s volatility thus may have provided an additional incentive for Congressional Democrats to focus more attention on the private sector, where they are assured not only that companies will cooperate with investigators but also that the companies will follow through on any promised changes those investigations may compel.

²⁶ Thomas 2019.

²⁷ Yasmeen Abutaleb and Erica Werner, “Trump’s support for bipartisan Senate drug pricing bill may not be enough to push it into law,” *New York Times*, 18 February 2020, <<https://www.washingtonpost.com/health/2020/02/18/trumps-support-bipartisan-senate-drug-pricing-bill-might-not-be-enough-push-it-into-law/>>.

²⁸ Yasmeen Abutaleb, Amy Goldstein and Ashley Parker, “Trump kills key drug price proposal he once embraced,” *Washington Post*, 11 July 2019, <https://www.washingtonpost.com/business/economy/white-house-kills-key-drug-pricing-rule-to-eliminate-hidden-rebates/2019/07/11/ff595192-a3de-11e9-bd56-eac6bb02d01d_story.html>.

²⁹ Annie Karni, Maggie Haberman and Sheila Kaplan, “Trump Retreats From Flavor Ban for E-Cigarettes,” *New York Times*, 17 November 2019, <<https://www.nytimes.com/2019/11/17/health/trump-vaping-ban.html>>.

Lesson 3: Trump has exposed Congress' institutional weaknesses and shifted power to the courts

A week before the 2018 midterm elections that returned the Democrats to power in the House, a new Pew Research Center poll nicely illuminated just how fine a line the future majority would have to walk in order to retain its public support. While more than a third of likely voters claimed their choice would constitute a vote against the president, and two thirds worried that a legislature controlled by Republicans would not focus enough on reining in the administration, a majority (55%) expressed concern that a Democratic majority would “focus too much on investigating the Trump administration.”³⁰ On the day of the Democrats' victory, presumptive Speaker Nancy Pelosi (D-CA) cautioned her caucus to tread carefully. “We are not going after Republicans the way they went after us. We are the Democrats and the Democrats have an open and transparent congress that will strive for bipartisanship.”³¹ The next day, however, Pelosi struck a slightly tougher note, emphasizing that Congress' oversight responsibility “doesn't mean we go looking for a fight, but it means that if we see a need to go forward, we will.”³²

Democrat-led House committees began their investigative work using the conventional tools of oversight: hearings and document requests to administration officials and agencies, with information compelled by subpoenas if necessary. In Lesson 1 of this paper, I argued that both parties have behaved according to the incentives of unified-versus-divided government, and have operated according to similar oversight patterns under the Trump administration as they did under the early years of the Obama administration. I also showed that the Trump administration has been only modestly less responsive to House Democrats, in terms of the provision of federal agency witnesses, than

³⁰ Pew Research Center, “Voter Enthusiasm at Record High in Nationalized Midterm Environment,” 26 September 2018, <<https://www.people-press.org/2018/09/26/voter-enthusiasm-at-record-high-in-nationalized-midterm-environment/#looking-ahead-concerns-about-too-little-or-too-much-oversight-of-the-trump-administration>>.

³¹ Alana Abramson, “Democrats Just Won the House. Here's What They Plan to Do First,” *Time*, 7 November 2018, <<https://time.com/5442973/democrats-won-house-majority-plans/>>.

³² “Democrats ready to pursue aggressive Trump oversight: Pelosi,” *Reuters* 7 November 2018, <<https://www.reuters.com/article/us-usa-election-house-investigations/democrats-ready-to-pursue-aggressive-trump-oversight-pelosi-idUSKCN1NC1FU>>.

the Obama administration was to House Republicans. However, as mentioned, my data do not distinguish between witnesses compelled to appear via subpoena and witnesses that testify voluntarily, and while the *basics* of oversight have not changed dramatically under Trump, I argue in this section that Trump has picked a series of high-profile battles with Congress that not only break from the norms and standards that have previously governed executive-legislature relations but also starkly demonstrate Congress' lack of institutional power relative to the executive. In response, Congress has turned to the courts to litigate inter-branch disputes, which only underscores the legislature's lack of institutional power compared with the other two branches of the federal government.

During the first ten months of the 116th Congress, House Democrats issued 56 public subpoenas for witness testimony and documents from the administration on topics ranging from the impeachment inquiry and the Mueller investigation to immigration, security clearances, and the president's finances.³³ (By contrast, the House Committee on Oversight and Government Reform alone issued more than 1,000 subpoenas in the course of its investigations of the Clinton administration.)³⁴ However, after only four months of increased scrutiny, President Trump vowed to fight "all" subpoenas issued by House committees, citing partisan motives: "These aren't, like, impartial people. The Democrats are trying to win 2020."³⁵ Following Trump's directive, administration officials defied subpoenas and committee requests for information on multiple fronts.

The administration's war on Congress' oversight powers intensified in fall 2019 after Speaker Pelosi announced a formal impeachment inquiry into whistleblower allegations that President Trump had threatened to withhold congressionally appropriated military aid to Ukraine in order to damage the reputation of a political rival—former vice president and eventual 2020 Democratic presidential nominee Joe Biden. In a letter

³³ Stephen Dinan and Gabriella Munoz, "Former House Lawyer Says Pelosi's Impeachment Inquiry is 'Illegal,'" *Washington Times*, 22 October 2019, <<https://www.washingtontimes.com/news/2019/oct/22/nancy-pelosi-democrats-produce-more-subpoenas-laws/>>.

³⁴ House Committee on Government Reform, "Congressional Oversight of the Clinton Administration," January 17, 2006 <<https://wayback.archive-it.org/4949/20141031200116/http://oversight-archive.waxman.house.gov/documents/20060117103516-91336.pdf>>.

³⁵ Charlie Savage, "Trump Vows Stonewall of 'All' House Subpoenas, Setting Up Fight Over Powers," *New York Times* 24 April 2019, <<https://www.nytimes.com/2019/04/24/us/politics/donald-trump-subpoenas.html>>.

to the chairs of the three committees leading the impeachment investigation, the White House announced its blanket refusal to cooperate, insisting that Trump “cannot permit his Administration to participate in this partisan inquiry.”³⁶ Despite the refusal of several subpoenaed witnesses to testify, the Democrats pressed forward and, after public hearings before the Intelligence and Judiciary Committees, impeached Trump for abuse of power and obstruction of Congress on December 18, 2019.

The Republican-controlled Senate acquitted Trump of both charges on an almost strictly party-line vote after rejecting Democratic subpoena requests for additional witnesses and documents that would aid in proving the House’s case. “I don’t know why a president would ever honor a subpoena after this,” Sen. Chris Murphy (D-CT) told reporters after the acquittal. “I think what we have signed off on is the future irrelevance of any congressional oversight of the executive branch.”³⁷

The denouement of Trump’s impeachment and Senate trial suggested that Congress had exhausted its traditional modes of enforcing oversight of the presidency. Trump was emboldened after his acquittal and, had he won reelection in November 2020, another House impeachment down the line for a different set of crimes would almost certainly have cost the party significant electoral support. Congress’ constitutionally sanctioned “power of the purse” could be wielded to deny funding to agencies defying congressional subpoenas; however, Trump’s demonstrated willingness to reroute appropriated funds toward desired projects under the guise of a national emergency,³⁸ as well as the extreme human costs of another partial government shutdown so soon after the 35-day standoff in 2018-2019, made this strategy especially risky. And in June 2019, Speaker Pelosi wryly noted the presence of “a jail down in the basement of the Capitol,” recalling the power of the House Sergeant-at-Arms to enforce inherent contempt via detainment that has not

³⁶ Letter from White House counsel Pat Cipollone to House leaders, 8 October 2019, <<https://www.washingtonpost.com/context/letter-from-white-house-counsel-pat-cipollone-to-house-leaders/0e1845e5-5c19-4e7a-ab4b-9d591a5fda7b/>>.

³⁷ Niels Lesniewski and Michael Macagnone, “Could Trump’s acquittal spell the end of White Houses honoring Congressional subpoenas?” *Roll Call*, 5 February 2020, <<https://www.rollcall.com/2020/02/05/could-trumps-acquittal-spell-the-end-of-white-houses-honoring-congressional-subpoenas/>>.

³⁸ Carl Hulse, “In Wielding Emergency Powers, Trump Paves a Dangerous Path Forward,” *New York Times*, 15 February 2019, <<https://www.nytimes.com/2019/02/15/us/politics/trump-national-emergency-congress.html>>.

been used since 1927 and is an almost unfathomable response to administration intransigence.³⁹

That left the courts, which Congress may ask to enforce criminal or civil contempt citations against executive officials. However, the litigation process can take months or years, and in the meantime the institutional plaintiff would remain without access to the documents and testimony necessary to complete an investigation that may well become moot when the next Congress convenes, committee chairs shift and staff members move on. Moreover, ceding power to the judiciary to regulate disputes between the other two branches weakens Congress' own institutional power.⁴⁰ According to Cornell constitutional scholar Josh Chafetz: "By asking the courts to settle these disputes in the first place, Congress is both advertising and increasing its own impotence. It is, in effect, saying to...officials it would like to hear from: 'We understand that you won't obey our lawful order to testify, but if a court orders you to testify before us, you won't dare disobey.' That approach signals to the public that Congress is less powerful than either the presidency or the courts."⁴¹

A courts-centric strategy also assumes the judiciary will be on Congress' side. While the federal courts have repeatedly confirmed the legislature's oversight powers, they have also historically been loath to rule on claims of executive privilege, having considered only a handful of cases involving the right to protect information from Congress prior to Trump's presidency.⁴² In 1977, the DC Circuit Court of Appeals famously argued that the Constitution's framers "relied... on the expectation that where conflicts in scope of authority arose between the coordinate branches, a spirit of dynamic compromise

³⁹ Jan Wolfe, "Explainer: Congress no longer runs a jail, so just how powerful are its subpoenas?" *Reuters*, 24 April 2019, <<https://www.reuters.com/article/us-usa-trump-congress-subpoena-explainer/explainer-congress-no-longer-runs-a-jail-so-just-how-powerful-are-its-subpoenas-idUSKCN1S02K8>>.

⁴⁰ Josh Chafetz, "Executive Branch Contempt of Congress," *University of Chicago Law Review* 76 (2009): 1083-1156.

⁴¹ Josh Chafetz, "Congress can't rely on the courts to enforce its subpoenas. Don't panic.," *Washington Post*, 2 March 2020, <<https://www.washingtonpost.com/outlook/2020/03/02/congress-cant-rely-courts-enforce-its-subpoenas-dont-panic/>>

⁴² Steve Vladeck, "Executive privilege, Congress' subpoena power, and the courts: A brief overview of a complex topic," *SCOTUSBlog*, 16 October 2019, <<https://www.scotusblog.com/2019/10/executive-privilege-congress-subpoena-power-and-the-courts-a-brief-overview-of-a-complex-topic/>>.

would promote resolution of the dispute,”⁴³ and, by remanding the case to a lower court, effectively ordered the House of Representatives and the subject of its suit, the FBI, to work it out—which they eventually did.⁴⁴ Nor has the Supreme Court ever decided a case regarding presidential invocations of executive privilege in the face of Congressional subpoenas. Even in the famous *US vs. Nixon* in 1974, the Court made its decision by balancing the executive’s recognized but qualified need for privileged information with the imperatives of criminal proceedings, underscoring that “we are not here concerned with the balance between the President’s generalized interest in confidentiality... and congressional demands for information.”⁴⁵

More recently, federal courts have signaled reluctance to get in the middle of executive-legislative disputes. In April 2020, in a case brought against White House Counsel Donald McGahn by the House Judiciary Committee after McGahn ignored subpoenas for his testimony, a three-judge panel on the D.C. Circuit Court of Appeals reversed a lower court ruling and dismissed the case, arguing that Congress lacked the standing to initiate the suit. Though the full DC Circuit Court ordered a rehearing at the Judiciary Committee’s request,⁴⁶ the initial decision may embolden courts to stay out of subpoena fights, removing Congress’ most effective means for ensuring compliance against an obstinate administration.

Lesson 4: Trump still listens to the courts (for now)

President Trump, committed from day one to packing the federal courts with political allies,⁴⁷ was quick to express contempt for judges who dared block his policy

⁴³ Todd Garvey, “Congressional Subpoenas: Enforcing Executive Branch Compliance,” Report No. R45653 (Washington, DC: Congressional Research Service, 2019), <<https://fas.org/sgp/crs/misc/R45653.pdf>>.

⁴⁴ “United States v. AT&T: Judicially Supervised Negotiation and Political Questions,” *Columbia Law Review* 77 (3, 1977): 466-494; see also Alissa M. Dolan and Todd Garvey, “Congressional Participation in Article III Courts: Standing to Sue,” Report No. R42454 (Washington, DC: Congressional Research Service, 2014), <<https://fas.org/sgp/crs/misc/R42454.pdf>>.

⁴⁵ *U.S. vs. Nixon*, 418 U.S. 683 (1974).

⁴⁶ Josh Gerstein, “Full appeals court to hear McGahn, border wall cases,” *Politico*, 13 March 2020, <<https://www.politico.com/news/2020/03/13/appeals-court-don-mcgahn-border-wall-cases-128914>>.

⁴⁷ Jason Zengerle, “How the Trump Administration Is Remaking the Courts,” *New York Times Magazine*, 22 August 2018, <<https://www.nytimes.com/2018/08/22/magazine/trump-remaking-courts-judiciary.html>>.

agenda. He attributed his losses in court to “Obama judges,” prompting a rebuke from Supreme Court Chief Justice John Roberts. “We do not have Obama judges or Trump judges, Bush judges or Clinton judges,” Roberts said in a statement. “What we have is an extraordinary group of dedicated judges doing their level best to do equal right to those appearing before them. That independent judiciary is something we should all be thankful for.” Trump, never one to back down from a fight, shot back on Twitter: “Sorry Chief Justice John Roberts, but you do indeed have ‘Obama judges,’ and they have a much different point of view than the people who are charged with the safety of our country.”⁴⁸ But despite his grumblings, Trump has thus far acquiesced to the courts’ constraints.

Over the past decade, however, as partisan polarization has continued to increase, politicians have begun floating the idea of the president’s defying federal courts’ decisions. In 2011, during his campaign for the 2012 Republican presidential nomination, former House Speaker Newt Gingrich announced his intention to “instruct the national security officials in a Gingrich administration to ignore the recent decisions of the Supreme Court on national security matters, and I would interpose the presidency in saying, as the commander in chief, we will not enforce this.”⁴⁹ In 2015, during his own run for the presidency, Senator Ted Cruz (R-TX) responded to the Supreme Court’s legalization of gay marriage in *Obergefell vs. Hodges* by suggesting that the decision could be narrowly interpreted to apply only to “the parties to a case” rather than to the nation at large.⁵⁰ In early 2017, after a Seattle district court judge blocked Trump’s first travel ban, former Republican governor of Arkansas and presidential candidate Mike Huckabee accused the executive branch of “emasculat[ing] itself by surrendering constantly to the idea that once the court says something, that’s it, it’s the law of the land. When I hear that phrase, ‘It’s

⁴⁸ Robert Barnes, “Rebuking Trump’s criticism of ‘Obama judge,’ Chief Justice Roberts defends judiciary as ‘independent,’” *Washington Post*, 21 November 2018, <https://www.washingtonpost.com/politics/rebuking-trumps-criticism-of-obama-judge-chief-justice-roberts-defends-judiciary-as-independent/2018/11/21/6383c7b2-ed7-11e8-96d4-0d23f2aaad09_story.html>.

⁴⁹ Lyle Denniston, “Can the President Ignore Supreme Court Rulings?” *Huffington Post*, 18 October 2011, <https://www.huffpost.com/entry/gingrich-supreme-court_b_1017418>.

⁵⁰ David A. Graham, “Can States Ignore the Supreme Court on Gay Marriage?” *The Atlantic*, 1 July 2015, <<https://www.theatlantic.com/politics/archive/2015/07/nullification-again/397373/>>.

the law of the land ‘cause the court said it,’ I think, did you guys pass ninth-grade civics, for gosh sake?”⁵¹ In 2018, Trump threatened the Ninth Circuit Court of Appeals, the nation’s largest appellate court and long the target of restructuring proposals in Congress,⁵² griping of its decisions: “That’s not law. Every case that gets filed in the Ninth Circuit we get beaten.” He added ominously: “I’ll tell you what, it’s not going to happen like this anymore.”⁵³

As of December 2020, federal courts had ruled against Trump 134 times and in his favor only 28.⁵⁴ However, the nation’s highest court has granted Trump several significant victories on his most controversial policy proposals: among others, on the twice-revised ban on travel from six Muslim-majority nations, on a ban on transgender people serving in the military, and on Trump’s declaration of a “national emergency” at the U.S.-Mexico border to justify the construction of a wall despite Congress’ refusal to appropriate money for the project.

The most high-profile case in which the Supreme Court ruled *against* Trump is *Department of Commerce vs. New York* (2019), in which the Court blocked the Department’s addition of a question to the 2020 short-form Census questionnaire asking about the citizenship status of respondents. In June 2019, several days before the Census Bureau’s deadline for finalizing the questionnaire, Chief Justice Roberts, writing for a 5-4 majority, argued that the justification offered by Commerce Secretary Wilbur Ross for the question’s inclusion did not match the evidence of his ulterior motives. The Trump administration had asked the highest court for an expedited ruling on the matter in order to meet the Census’ printing deadline, even though no appeals courts had yet ruled on the issue. Three district court judges had previously ruled that Secretary Ross had been dishonest about his reasons for adding the question.

In March 2018, after his announcement that the short-form Census questionnaire

⁵¹ <<https://www.newyorker.com/news/news-desk/when-presidents-think-about-defying-the-courts>>.

⁵² Eric J. Gribben, “California Split: A Plan to Divide the Ninth Circuit,” *Duke Law Journal* 47 (1998): 351-398, <<https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1018&context=dlj>>.

⁵³ Adam Liptak, “Trump Takes Aim at Appeals Court, Calling It a ‘Disgrace,’” *New York Times*, 20 November 2018, <<https://www.nytimes.com/2018/11/20/us/politics/trump-appeals-court-ninth-circuit.html>>.

⁵⁴ Institute for Policy Integrity, New York University School of Law, “Roundup: Trump-Era Agency Policy in the Courts,” 25 June 2020, <<https://policyintegrity.org/trump-court-roundup>>.

would include a question about citizenship status, Secretary Ross testified before the House Ways and Means Committee that the Department of Justice had “initiated the request”⁵⁵ for the question in order to aid its enforcement of the Voting Rights Act. Ross repeated this claim on May 10 in his testimony before a Senate Appropriations subcommittee.⁵⁶ However, emails obtained through multi-state litigation revealed that Secretary Ross had sought inclusion of the question long before the Department of Justice issued its formal request in December 2017, and had also discussed the possible addition of a citizenship question with Stephen K. Bannon, then Trump’s chief political advisor.⁵⁷

When Democrats regained the House majority in November 2018, Elijah Cummings, one of the most outspoken critics of the citizenship question, immediately requested Secretary Ross’ testimony before his committee. Ross turned up on March 14, 2019 but refused to provide the committee with the documents it had requested nor any details of his discussions about the citizenship question with Attorney General Jeff Sessions. At the hearing, Democrats offered new evidence from a transcribed interview with a Department of Justice official: not only had administration discussions over the citizenship question begun months before Secretary Ross had claimed, but a member of the Trump Transition Team had also provided the Justice Department with a draft letter in October 2017 requesting the reinstatement of the question.⁵⁸ Meanwhile, Republicans maintained that committee Democrats were using their oversight powers in an attempt to influence ongoing litigation, citing warnings from Supreme Court justices Clarence Thomas and Neil Gorsuch that the exhibition of additional records in a “legal setting”

⁵⁵ Salvador Rizzo, “Wilbur Ross’s false claim to Congress that the census citizenship question was DOJ’s idea,” *Washington Post*, 30 July 2018, <<https://www.washingtonpost.com/news/fact-checker/wp/2018/07/30/wilbur-ross-false-claim-to-congress-that-the-census-citizenship-question-was-doj-idea/>>.

⁵⁶ Senate Committee on Appropriations, Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies, “Secretary Ross on Fiscal Year 2019 Budget Request,” Hearing, 10 May 2018, <<https://www.c-span.org/video/?445193-1/commerce-secretary-ross-testifies-fiscal-year-2019-budget-request>>.

⁵⁷ Glenn Thrush and Adam Liptak, “Wilbur Ross Changes Story on Discussions of Citizenship Question for Census,” *New York Times*, 12 October 2018, <<https://www.nytimes.com/2018/10/12/us/politics/wilbur-ross-commerce-census-citizenship.html>>.

⁵⁸ House Committee on Oversight and Reform, “Supplemental Memo on Transcribed Interview with John Gore Regarding Addition of Citizenship Question to Census,” Memorandum, 14 March 2019, <<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2019-03-14.%20Supplemental%20Memo%20on%20Gore%20TI.pdf>>.

could influence the integrity of the pending case before the Court.

On April 2, 2019, the Oversight Committee subpoenaed information from Secretary Ross and Attorney General William Barr and, when neither official turned over the requested documents, voted to hold both men in contempt of Congress on June 12. (President Trump’s invoked executive privilege over the documents on the morning of the committee’s vote.) That same month, in a serendipitous development, the estranged daughter of Republican political consultant Thomas Hofeller discovered a 2015 report on her late father’s hard drive that explicated the benefits of citizenship data for redistricting to the advantage of “Republicans and Non-Hispanic Whites.”⁵⁹ The treasure trove of documents Hofeller’s daughter turned over to the plaintiffs in a state-level suit also included evidence that Hofeller had communicated with both the Trump Transition Team and a longtime Census Bureau employee about the addition of the citizenship question, urging the incoming administration to rely on the Voting Rights Act to justify the change. On the heels of these revelations, the full House held Barr and Ross in contempt of Congress on July 16.

In his majority opinion blocking the addition of the citizenship question and remanding the case to the district courts, Supreme Court Chief Justice Roberts opined not on the constitutionality of the question itself but rather on Secretary Ross’ “contrived” explanation for the addition, citing Ross’ violation of the requirement that executive officials “offer genuine justifications for important decisions, reasons that can be scrutinized by courts and the interested public.”⁶⁰ The decision left open the possibility that a more convincing justification for the change could pass constitutional muster but, given the imminent July 1 deadline for printing the Census forms, both the Commerce and Justice departments announced on July 2 that they would comply with the Court’s decision.

The next day, Trump corrected the record via Twitter: “The News Reports about the Department of Commerce dropping its quest to put the Citizenship Question on the Census is incorrect or, to state it differently, FAKE! We are absolutely moving forward,

⁵⁹ <<https://www.commoncause.org/wp-content/uploads/2019/05/2015-Hofeller-Study.pdf>>.

⁶⁰ Adam Liptak, “Supreme Court Leaves Census Question on Citizenship in Doubt,” *New York Times*, 27 June 2019, <<https://www.nytimes.com/2019/06/27/us/politics/census-citizenship-question-supreme-court.html>>.

as we must, because of the importance of the answer to this question.” Commerce and Justice both quickly about-faced and announced the pursuit of a “legally available path” to including the question.⁶¹ After more than a week of uncertainty, Trump finally backed down. The 2020 Census forms were printed without the citizenship question, while Trump issued an executive order that directed “every department and agency in the federal government to provide the Department of Commerce with all requested records regarding the number of citizens and non-citizens in our country,”⁶² echoing a compromise policy the Commerce Department had previously urged Trump to adopt in lieu of revising the Census.

The Census denouement shows Trump’s defiance of democratic norms had its limits. During the intervening week between the Supreme Court’s decision and Trump’s announcement that the 2020 Census would not be printed with the citizenship question, Trump mulled a symbolic if impractical show of strength: Two days after the Supreme Court handed down its decision, conservative talk show host Hugh Hewitt wrote an op-Ed in the *Washington Post* suggesting that Trump simply issue an executive order mandating that the Census include the question,⁶³ a course of action Trump claimed to be “considering.”⁶⁴ Hewitt relied on the legal reasoning explicated by former federal judge and Trump advisor Michael Luttig: “If the president were to do an executive order directing that the citizenship question be added to the 2020 census, relying for that executive order on his full Article II powers as the president of the United States, then...that would more than satisfy the Supreme Court, which has wanted nothing more than a rational justification for the question.”⁶⁵

⁶¹ Michael Wines, Maggie Haberman and Alan Rappeport, “Justice Dept. Reverses Course on Citizenship Question on Census, Citing Trump’s Orders,” *New York Times*, 3 July 2019 <<https://www.nytimes.com/2019/07/03/us/politics/census-citizenship-question.html>>.

⁶² Anita Kumar and Caitlin Oprysko, “Trump abandons effort to add citizenship question to census,” *Politico*, 11 July 2019, <<https://www.politico.com/story/2019/07/11/trump-expected-to-take-executive-action-to-add-citizenship-question-to-census-1405893>>.

⁶³ Hugh Hewitt, “The census belongs to the president. He needs to get it back. Here’s how.,” *Washington Post*, 29 June 2019, <<https://www.washingtonpost.com/opinions/2019/06/29/census-belongs-president-he-needs-get-it-back-heres-how/>>.

⁶⁴ Morgan Chalfant, “Trump considering executive order on citizenship question for census,” *The Hill*, 5 July 2019, <<https://thehill.com/homenews/administration/451749-trump-considering-executive-order-on-citizenship-question-for-census>>.

⁶⁵ Kumar and Oprysko 2019.

It seemed of little import that, were Trump to issue the order, he would be met with injunctions from district court judges, and forced to move through another appeals process that would resolve itself long after the Census forms had been printed and sent; the point was that the executive-order ploy, though impractical, would demonstrate Trump's unwillingness to back down from a fight, and might even be finessed so as not to offend the Supreme Court. "I have a lot of respect for Justice Roberts—but he didn't like it, but he did say come back," Trump said. "We could start the printing now and maybe do an addendum after we get a positive decision."⁶⁶ It isn't clear how much credibility the Supreme Court would have granted the administration's post hoc alternative explanation for the question after more than two years of justifying the change via the Voting Rights Act, nor perhaps could Trump have politically afforded even the semblance of countering the legitimacy of the Supreme Court. Ensuing litigation might also have unveiled more evidence along the lines of the Hofeller report that would embarrass the Republican party. There are a million reasons why Trump might have balked at doubling down on the citizenship question, but here I offer another: Trump was unwilling to deploy the same scorched-earth strategy toward the Supreme Court that he had used on Congress in order to illustrate the weakness of what was at the time his institutional enemy.

The battle over the Census has laid bare the legislature's lack of singular enforcement power: The full House voted on July 16 to hold both Attorney General Barr and Secretary Ross in contempt of Congress for defying subpoenas, and yet the Oversight Committee is still waiting on the requested documents. In her first act as new Oversight Committee Chair after the death of Elijah Cummings in October 2019, Rep. Carolyn Maloney (D-NY) filed a federal civil suit against Barr and Ross to enforce the contempt resolution. But by the time the case is resolved and—under the best of circumstances—the subpoenas enforced, it's unlikely that revelations about a question *almost* included on the 2020 Census under what might then be a previous administration will garner the kind of public interest or press attention that merits the expenditure of a committee's investigative resources.

⁶⁶ Chalfant 2019.

Thus, Trump’s decision to preserve the Supreme Court’s legitimacy by accepting its decision on the Census, while relying on agency data to paint a national picture of the citizen population of the United States, underscored Congress’ institutional weakness relative not only to the executive but also to the judiciary. Trump is not an ideologue, but he enjoys both gaining and displaying his power, and thus policy goals—inclusion of the citizenship question on the Census, for instance—are of secondary importance to institutional damage. By opting not to challenge the Supreme Court, if only symbolically, Trump extended a deference toward the judiciary in marked contrast to his utter contempt for the Democrat-controlled House; his grudging respect for one branch only emphasized his disdain for the other. I contend that Trump recognized that fighting a war on two fronts would be counterproductive; by treating one branch as the executive’s equal and the other as inferior, whether intentionally or not, Trump heightened his attacks on Congress by permitting himself to be constrained by the courts. This put Congress in a far weaker position than if Trump had gone ahead and symbolically defied the Supreme Court by issuing an executive order mandating a citizenship question.

Lesson 5: Members’ public actions can be effective constraints on presidential power

Congress’ formal investigative powers were revealed as ineffective constraints on presidential power in the Trump era, but all is not lost for the people’s branch. Individual legislators, particularly renegade Republicans willing to push back against Trump, may still wield influence over the administration by criticizing the president in the public sphere.⁶⁷ To do so, members rely on multiple levers, including hearings (using them to highlight administration malfeasance or morally questionable policy choices), floor speeches, press statements, and even legislation crafted as much to publicly signal displeasure as to legally compel the president to change course. But, in the Trump era, foreign policy remained the area in which members’ public actions were most effective.

⁶⁷ David Mayhew, *America’s Congress: Actions in the Public Sphere* (New Haven, CT: Yale University Press, 2000).

Public criticisms of the president are not typically treated as “oversight” in the academic literature. I nevertheless consider them here for two reasons: first, because they actuate the same goal as formal oversight activities—namely, constraints on presidential power and, thus, the maintenance of institutional equilibrium at the federal level. Second, under a president who consistently tests the limits of executive power, criticism from within Trump’s own party delineates for both the president and the public exactly where those limits lie. Via public stands against Trump, Republicans signal which broader norms they will step up to defend as well as, via silence, what they are willing to tolerate from the president. Because Trump’s decision-making is characterized by such inconsistency and extemporaneous action, Congressional Republicans can effectively constrain if not the actions themselves then the fallout from those actions by making it clear to Trump which battles are worth fighting.

Because many of Trump’s policy choices conflict with Republican orthodoxy, the potential for bipartisan pushback against the administration is greatest in foreign policy. Previous research shows that same-party criticism is a costly and therefore particularly influential cue to a mass public that relies heavily on elite heuristics when evaluating questions of foreign policy.⁶⁸ On an issue that does not command strong public preferences, Trump’s own conflicting messages on foreign policy gums up the mechanism by which reliable cues are transmitted to voters, making Republicans much more able—and willing—to constrain Trump through public criticism.

In many scenarios, Republican members may refuse to cross Trump due to genuine ideological fealty or simply fear of retaliation from the president’s electoral base, as some Democrats have suggested.⁶⁹ However, on foreign policy, many Republicans find themselves pulled in competing directions, stuck between partisan incentives to rally behind their party’s leader and ideological incentives to push back against Trump’s departures

⁶⁸ Adam Berinsky, *In Time of War: Understanding American Public Opinion from World War II to Iraq* (Chicago, IL: University of Chicago Press, 2009); Matthew Baum and Timothy Groeling, “Shot by the Messenger: Partisan Cues and Public Opinion Regarding National Security and War,” *Political Behavior* 31(2, 2010): 157-186.

⁶⁹ See, e.g., Sherrod Brown, “In Private, Republicans Admit They Acquitted Trump Out of Fear,” *New York Times* 5 February 2020, <<https://www.nytimes.com/2020/02/05/opinion/trump-senate-acquittal-impeachment.html>>.

from traditional Republican foreign policy orthodoxy. Trump is not an isolationist—witness his support for longstanding US ally Saudi Arabia’s war in Yemen, or his plying of the Saudi government with weapons and American troops—but nor does he embrace international cooperation, particularly not through established security frameworks such as NATO or vested relationships with European allies. Trump has shown a preference for militaristic unilateralism via the killing of Iranian Major General Suleimani in early 2020, which the Iranian foreign minister was quick to call an “act of war.” But he has also touted his supposedly unrivaled ability to negotiate with even the most reprehensible world leaders: His meetings with North Korean President Kim Jung-Un, for which Trump declared “everyone thinks” he deserves a Nobel Peace Prize,⁷⁰ are some of the bones he’s tossed to diplomacy in lieu of military action.

The fact that many of Trump’s decisions are either themselves contradictory, justified by inconsistent arguments, or at odds with traditional Republican commitments on foreign affairs indicates that Republican elites have both greater incentives and more breathing room to break with Trump on foreign policy than they do in other arenas. For instance, five of the seven vetoes Trump has issued since taking office have been foreign-policy related, indicating a divide between the president and his party on arms sales to Middle Eastern nations as well as presidential authority over military action in Yemen and Iran. Because co-partisan criticism signals the legitimacy of the complaint and tends to be amplified by the media, such pushback can sway public opinion and cost the White House politically.⁷¹ In this section, I draw on two examples of presidential decisions on foreign policy that have spurred Republican members to publicly criticize Trump—the president’s decision to withdraw US troops from Northern Syria, prompting a Turkish invasion, and the killing of Iranian Major General Suleimani—and assess the effects of those actions on constraining and changing Trump’s policymaking and strategy.

During the 2016 presidential campaign, Trump repeatedly criticized former President Obama’s failure to militarily enforce his “red line” following Syrian leader Bashar

⁷⁰ Allie Malloy, “Trump: ‘Everyone thinks’ I deserve Nobel Prize,” *CNN* 9 May 2018, <<https://www.cnn.com/2018/05/09/politics/trump-nobel-prize/index.html>>.

⁷¹ Tim Groeling, *When Politicians Attack: Party Cohesion in the Media* (New York, NY: Cambridge University Press, 2010).

al-Assad's use of chemical weapons in violation of international law. In April 2017, Trump ordered two strikes on Syrian weapons facilities in retaliation for Assad's use of sarin gas against civilians. Trump was treated to a round of acclimation from Republican establishment figures such as Sens. John McCain and Marco Rubio (R-FL), in addition to grudging support from Democratic leaders (some of whom had failed to convince President Obama to take the same action).⁷² Sen. Rand Paul (R-KY) reminded Trump that the Constitution requires Congressional approval for military actions, but Paul's wildcard reputation muted the effect of his criticism.

Given the bipartisan accolades Trump received after the 2017 Syrian airstrikes, members of Congress were flummoxed on October 6, 2019 when Trump decided, apparently after speaking with Turkish President Recep Tayyip Erdoğan over the phone,⁷³ to pull remaining US special operations forces from Northern Syria, effectively abandoning the region's Kurdish population to the Turkish forces that invaded Syria two days later. Trump appeared to recognize the consequences of the withdrawal,⁷⁴ and his decision prompted Republican allies in Congress to deliver some of the harshest criticism they had ever leveled at the president.

Sen. Lindsey Graham (R-SC), a onetime Trump critic turned fervent supporter, called the withdrawal "a stain on America's honor," adding "I hope I'm making myself clear how short-sighted and irresponsible this decision is."⁷⁵ Sen. Rubio called the withdrawal "a grave mistake," while House Foreign Affairs Committee Ranking Member Michael McCaul (R-TX) urged the president to consider how his decision would "ultimately threaten our homeland."⁷⁶

While assuring his "great respect" for his Republican critics, on October 9 the

⁷² See, e.g., Ben Rhodes, "Inside the White House During the Syrian 'Red Line' Crisis," *The Atlantic* 3 June 2018, <<https://www.theatlantic.com/international/archive/2018/06/inside-the-white-house-during-the-syrian-red-line-crisis/561887/>>.

⁷³ Peter Baker and Lara Jakes, "Trump Throws Middle East Policy Into Turmoil Over Syria," *New York Times* 7 October 2019, <<https://www.nytimes.com/2019/10/07/us/politics/turkey-syria-trump>>.

⁷⁴ Eric Schmitt, Maggie Haberman and Edward Wong, "President Endorses Turkish Military Operation in Syria, Shifting U.S. Policy," *New York Times* 7 October 2019, <<https://www.nytimes.com/2019/10/07/us/politics/trump-turkey-syria>>.

⁷⁵ Chris Mills Rodrigo, "Graham calls Trump move in Syria 'a disaster in the making,'" *The Hill* 7 October 2019, <<https://thehill.com/homenews/senate/464614-graham-calls-trump-move-in-syria-a-disaster-in-the-making>>.

⁷⁶ Rodrigo 2019.

president backtracked, penning a short letter to Erdoğan, beseeching him not to “be a fool” and “slaughter thousands of people.”⁷⁷ On October 14, Trump announced he would impose economic sanctions on two Turkish government agencies and three ministers, threatening to “swiftly destroy” Turkey’s economy if the offensive continued.⁷⁸

On the same day that Vice President Mike Pence and Secretary of State Mike Pompeo flew to Ankara to negotiate a cease-fire with Erdoğan, the House passed a resolution opposing Trump’s withdrawal 354-60, with two-thirds of Republicans, including all members of the Republican leadership, voting aye.⁷⁹ The Senate, however, rejected the resolution; Sen. Paul blocked the motion because, he maintained, “it does nothing to fix the problem” and “is simply a way to have petty partisan criticism of the president infect this body.”⁸⁰

A week after issuing his initial executive order, Trump announced he was lifting the sanctions he’d just imposed on Turkey, due to his success in brokering what the president called a “permanent cease-fire” and agreement between Turkey and Russia to co-protect the Northern Syrian border.⁸¹ Sen. Graham introduced a sanctions package that would cut off military assistance to Turkey, among other punishments, while the House passed its own sanctions legislation by a vote of 405-11.

Trump’s repeated course corrections, from his letter to Erdoğan to his imposition of sanctions to his dispatching Pence and Pompeo to Turkey, indicate that Trump is responsive, at least in the short term, to rhetorical pushback from members of his own party. In addition, Congress has not held back on more traditional oversight of Trump’s foreign policymaking: Throughout the fall of 2019, the House Foreign Affairs Committee

⁷⁷ Quint Forney, “‘Don’t be a fool’: Trump threatened Turkish president in letter,” *Politico* 16 October 2019, <<https://www.politico.com/news/2019/10/16/trump-erdogan-letter-turkey-048758>>.

⁷⁸ Alan Rappeport and Michael Crowley, “Trump Imposes Sanctions on Turkey as Syria Conflict Intensifies,” *New York Times* 14 October 2019, <<https://www.nytimes.com/2019/10/14/us/politics/trump-turkey-tariffs.html>>.

⁷⁹ Catie Edmondson, “In Bipartisan Rebuke, House Majority Condemns Trump for Syria Withdrawal,” *New York Times* 16 October 2019, <<https://www.nytimes.com/2019/10/16/us/politics/house-vote-trump-syria.html>>.

⁸⁰ Burgess Everett and Marianne Levine, “Senate Republicans reject effort to condemn Trump’s Syria withdrawal,” *Politico* 17 October 2019, <<https://www.politico.com/news/2019/10/17/trump-syria-resolution-049977>>.

⁸¹ Michael Crowley and Lara Jakes, “Trump Claims Credit for a Syria Cease-Fire and Says U.S. Role in Region Is Over,” *New York Times* 23 October 2019, <<https://nytimes.com/2019/10/23/us/politics/trump-syria-turkey-ceasefire.html>>.

held two hearings on Trump’s Syria policy, while the Senate Foreign Relations Committee in October invited the Special Envoy for Syrian Engagement to testify on the Administration’s efforts to stop the Turkish offensive against the Kurds. The House rebutted both the withdrawal and the revocation of sanctions with veto-proof majorities, while the Senate looks poised to overwhelmingly approve sanctions against Turkey in 2020.

On the campaign trail in 2015-2016, Trump repeatedly promised that, if elected, he would renegotiate the Joint Comprehensive Plan of Action (JCPOA), a framework to limit Iranian nuclear capabilities negotiated in 2015 by then-President Obama in conference with the five permanent members of the UN Security Council plus Germany. In May 2018, Trump officially withdrew the US from the agreement, re-imposing the “highest level” sanctions against Iran but promising to work with allies toward “a real, comprehensive, and lasting solution to the Iranian nuclear threat.”⁸²

Trump’s announcement prompted the British, French, German and Iranian governments to reiterate their commitment to the agreement and former President Obama to issue a rare statement calling the withdrawal “a serious mistake.”⁸³ Most Republicans in Congress praised the decision, some more haltingly than others. Senate Majority Leader Mitch McConnell and House Speaker Paul Ryan gave their full support, while House Armed Services Committee Chair Mac Thornberry (R-TX) stood behind the president but allowed that his “preference would have been to give our European allies a few more months to strengthen the deal.”⁸⁴ There were a few Republican defectors: House Foreign Affairs Committee Chair Ed Royce (R-CA) said that “withdrawal would actually set back” efforts to curb Iran’s nuclear ambitions,⁸⁵ while Sen. Jeff Flake, a frequent Trump

⁸² “Full Transcript of Trump’s Speech on the Iran Nuclear Deal,” *New York Times* 8 May 2018, <<https://www.nytimes.com/2018/05/08/us/politics/trump-speech-iran-deal.html?action=click&module=Intentional&pgtype=Article>>.

⁸³ “Obama reacts to Trump’s withdrawal from Iran deal,” *Axios* 8 May 2018, <<https://www.axios.com/obama-statement-on-trumps-iran-deal-withdrawal-3b257f8a-9f6c-45ff-bb69-e9513d3ef93b.html>>.

⁸⁴ “Trump Withdrew From the Iran Deal. Here’s How Republicans, Democrats and the World Reacted,” *New York Times* 8 May 2018, <<https://www.nytimes.com/2018/05/08/world/middleeast/trump-iran-deal-republicans-democrats-world-reactions.html>>.

⁸⁵ Nahal Toosi, Louis Nelson and Cristiano Lima, “Trump says U.S. pulling out of ‘rotten’ nuclear deal,” *Politico* 8 May 2018, <<https://www.politico.com/story/2018/05/08/iran-responds-trump-nuclear-deal-573252>>.

critic, claimed that “withdrawing now does not serve our national interest.”⁸⁶ Yet in the midst of the turmoil surrounding Trump’s decision, no administration officials testified on Iran policy in either chamber of Congress in 2018.⁸⁷

More than a year after Trump announced the US’s withdrawal from JCPOA, in June 2019, Iran shot down an unmanned US drone, prompting Trump to boast that the US military was “cocked and loaded” and ready to respond to the attack.⁸⁸ Trump later revealed that he had aborted strikes on three Iranian military targets after learning that the attack would result in 150 casualties. “I thought about it for a second,” Trump explained, “and I said, ‘You know what? They shot down an unmanned drone, plane, whatever you want to call it.’ And here we are, sitting with 150 dead people that would have taken place probably within a half an hour after I said go ahead. And I didn’t like it.”⁸⁹

While some Republicans, including House Conference Chair Liz Cheney (R-WY), urged a more aggressive response, 27 Republicans joined almost all Democrats and Republican-turned-Independent Rep. Justin Amash (I-MI) to pass an amendment to the National Defense Authorization Act (NDAA) requiring President Trump to secure congressional authorization before using force against Iran. Four Republicans had earlier voted with the Democrats for similar language in the Senate, but it failed to secure a filibuster-proof majority and the amendment was eventually stripped from the final bill.⁹⁰

In the fall of 2019, Trump seemed to adopt a more dovish position toward Iran: Not only did he fire National Security Advisor and Iran hard-liner John Bolton but, after a September 2019 Iranian attack on Saudi oil fields that Secretary Pompeo called an “act

⁸⁶ Jordain Carney, “GOP senator: Withdrawing from Iran deal not in ‘national interest,’” *The Hill* 8 May 2018, <<https://thehill.com/homenews/senate/386787-gop-senator-withdrawing-from-iran-deal-not-in-national-interest>>.

⁸⁷ Brian McKeon and Caroline Tess, “How Congress Can Take Back Foreign Policy: A Playbook for Capitol Hill,” *Foreign Affairs* (January/February 2019): 76-87.

⁸⁸ Michael D. Shear, Helene Cooper and Eric Schmitt, “Trump Says He Was ‘Cocked and Loaded’ to Strike Iran, but Pulled Back,” *New York Times* 21 June 2019, <<https://www.nytimes.com/2019/06/21/us/politics/trump-iran-attack.html>>.

⁸⁹ Shear et al. 2019

⁹⁰ Rebecca Kheel, “Democrats look to ramp up fight over Trump’s war powers,” *The Hill* 2 February 2020, <<https://thehill.com/policy/defense/480980-democrats-look-to-ramp-up-fight-over-trumps-war-powers>>.

of war,”⁹¹ Trump also opted to impose new sanctions against Iran in lieu of a military attack.⁹² Trump’s friend and ally Sen. Graham remarked that he had been “looking for a response [to the Saudi attack] that would restore deterrence and my belief is additional sanctions will fall short.”⁹³ But other Republicans, such as Sen. Mitt Romney (R-UT), said that direct engagement in response to the attacks would be a mistake.⁹⁴

Trump abandoned whatever ambiguity he’d felt about striking Iran in late December 2019, when he approved five air strikes on Iranian-backed groups in Iraq and Syria in retaliation for an Iranian rocket attack two days prior.⁹⁵ Just a few days after those strikes, Trump shocked the world by ordering the assassination of Iranian Major General Suleimani, the leader of Iran’s Quds Force and a de facto son to Iran’s Supreme Leader Ayatollah Khamenei. The Pentagon maintained that Suleimani was “actively developing plans to attack American diplomats and service members in Iraq and throughout the region,” though it didn’t offer any specifics. “If we get word of attacks, we will take pre-emptive action as well to protect American forces, protect American lives,” Defense Secretary Esper said. “The game has changed.”⁹⁶

Trump received his first significant pushback from Fox News anchor and noted Trump-whisperer Tucker Carlson. “There are an awful lot of bad people in this world. We can’t kill them all. It’s not our job,” Carlson argued. He added: “It’s pretty clear that things could start to move in the wrong direction pretty quickly, we’re praying they

⁹¹ Nicole Gaouette, Jennifer Hansler, Pamela Brown and Kevin Liptak, “Pompeo says Saudi attack an ‘act of war’ as Trump sounds more cautious note,” *CNN* 19 September 2019, <<https://www.cnn.com/2019/09/18/politics/donald-trump-iran-sanctions-treasury/index.html>>.

⁹² Adam Entous and Evan Osnos, “Last Man Standing,” *The New Yorker* 10 February 2020, <<https://www.newyorker.com/magazine/2020/02/10/qassem-suleimani-and-how-nations-decide-to-kill>>.

⁹³ Nicole Gaouette, Jennifer Hansler, Pamela Brown and Kevin Liptak, “Pompeo says Saudi attack an ‘act of war’ as Trump sounds more cautious note,” *CNN* 19 September 2019, <<https://www.cnn.com/2019/09/18/politics/donald-trump-iran-sanctions-treasury/index.html>>.

⁹⁴ Nahal Toosi, “Trump’s deference to Saudi Arabia infuriates much of D.C.,” *Politico* 16 September 2019, <<https://www.politico.com/story/2019/09/16/saudi-trump-oil-iran-1498147>>.

⁹⁵ Julian E. Barnes, “U.S. Launches Airstrikes on Iranian-Backed Forces in Iraq and Syria,” *New York Times* 29 December 2019, <<https://www.nytimes.com/2019/12/29/world/middleeast/us-airstrikes-iran-iraq-syria.html>>.

⁹⁶ Michael Crowley, Falih Hassan and Eric Schmitt, “U.S. Strike in Iraq Kills Qassem Suleimani, Commander of Iranian Forces,” *New York Times* 2 January 2020, <<https://www.nytimes.com/2020/01/02/world/middleeast/qassem-soleimani-iraq-iran-attack.html>>.

don't, but they could."⁹⁷ Former President Obama pointed out that "this is the one of the rare times the Fox News audience will hear criticisms of Trump policies in prime time."⁹⁸

Two days after the Suleimani killing, the *New York Times* reported that military officials had offered Trump the option of killing Suleimani as a bookend to their preferred range of responses, not thinking Trump would actually bite.⁹⁹ The next day, Trump tweeted: "Let this serve as a WARNING that if Iran strikes any Americans, or American assets, we targeted 52 Iranian sites (representing the 52 American hostages taken by Iran many years ago), some at a very high level & important to Iran & the Iranian culture, and those targets, and Iran itself, WILL BE HIT VERY FAST AND VERY HARD. The USA wants no more threats!" Lest he be misunderstood, Trump told reporters on Air Force One later that day, "They're allowed to use roadside bombs and blow up our people. And we're not allowed to touch their cultural site? It doesn't work that way."¹⁰⁰

Though Republicans in Congress had been largely supportive of the Suleimani assassination, the thought of Persepolis in rubble spawned a rebellion in both the White House and Congress. Defense Secretary Esper took the extraordinary step of rebuking Trump's threats by assuring reporters that "we will follow the laws of armed conflict," referring to the 1954 Hague Convention that prohibits targeting cultural sites in warfare.¹⁰¹ Both Secretary Pompeo and White House advisor Kellyanne Conway walked back Trump's remarks, claiming he "didn't say" he would target cultural sites.¹⁰² Sen. Graham announced that he had relayed his opposition to targeting cultural sites on a

⁹⁷ Victor Garcia, "Tucker Carlson on Suleimani killing: 'There are an awful lot of bad people in this world. We can't kill them all,'" *Fox News* 3 January 2020, <<https://www.foxnews.com/media/tucker-carlson-blasts-washington-establishment-for-pushing-war-with-iran>>.

⁹⁸ Kayla Epstein, "One of Trump's most vocal critics on Iran? Fox News's Tucker Carlson," *Washington Post* 7 January 2020, <<https://www.washingtonpost.com/arts-entertainment/2020/01/07/one-trumps-most-vocal-critics-iran-fox-newss-tucker-carlson/>>.

⁹⁹ Helene Cooper, Eric Schmitt, Maggie Haberman and Rukmini Callimachi, "As Tensions With Iran Escalated, Trump Opted for Most Extreme Measure," *New York Times* 4 January 2020, <<https://www.nytimes.com/2020/01/04/us/politics/trump-suleimani.html>>.

¹⁰⁰ Lara Jakes, "Defenders of History Take Aim at Trump's Threat to Strike Iran's Cultural Sites," *New York Times* 5 January 2020 <<https://www.nytimes.com/2020/01/05/world/middleeast/trump-cultural-sites.html>>.

¹⁰¹ Peter Baker and Maggie Haberman, "Pentagon Rules Out Striking Iranian Cultural Sites, Contradicting Trump," *New York Times* 6 January 2020 <<https://www.nytimes.com/2020/01/06/us/politics/trump-esper-iran-cultural-sites.html>>.

¹⁰² Morgan Chalfant, "Kellyanne Conway defends Trump threat to target Iranian cultural sites," *The Hill* 6 January 2020, <<https://thehill.com/homenews/administration/476915-conway-defends-trump-threat-to-target-iranian-cultural-sites>>.

phone call with President Trump,¹⁰³ while Senate Majority Leader McConnell conceded that Trump’s proposed mode of attack was “not appropriate.”¹⁰⁴

Trump quickly backed down, offering that the US is “supposed to be very careful with [Iran’s] cultural heritage. ...And you know what, if that’s what the law is, I like to obey the law.” After Iran launched retaliatory attacks on two US air bases in Iraq, intentionally avoiding American casualties, Trump held a press conference at the White House and announced a new round of sanctions, while assuring the public that “Iran appears to be standing down.”¹⁰⁵

Then, on January 8, 2020 Sen. Mike Lee (R-UT) exploded to reporters, calling a White House briefing on the president’s Iran strategy “insulting” and “probably the worst briefing I’ve seen, at least on a military issue, in the nine years I’ve served in the United States Senate.” Lee blasted the White House’s condescending expectation that “we need to be good little boys and girls and not debate this in public,” and added, “I find that absolutely insane. It’s un-American, it’s unconstitutional and it’s wrong.”¹⁰⁶ Lee, one of four Republican senators to vote in favor of the June 2019 NDAA amendment requiring Congressional authorization for further military action against Iran, quickly announced his support for the similar and stand-alone War Powers Resolution sponsored by Democratic Sen. Tim Kaine (D-VA).

On January 12, Defense Secretary Esper claimed he hadn’t seen one of the key pieces of intelligence the White House had used to justify the Suleimani killing. Trump lashed out on Twitter two days later, verifying that the intelligence on Suleimani’s “imminent” attacks on the US was solid, but adding “it doesn’t really matter because of his

¹⁰³ Peter Baker and Maggie Haberman, “Pentagon Rules Out Striking Iranian Cultural Sites, Contradicting Trump,” *New York Times* 6 January 2020 <<https://www.nytimes.com/2020/01/06/us/politics/trump-esper-iran-cultural-sites.html>>.

¹⁰⁴ Alexander Bolton, “McConnell: ‘Not appropriate’ to target Iranian cultural sites,” *The Hill* 7 January 2020, <<https://thehill.com/homenews/senate/477187-mcconnell-not-appropriate-to-target-iranian-cultural-sites>>.

¹⁰⁵ Nicole Gaouette, Hamdi Alkhshali, Ryan Browne, Barbara Starr and Tamara Qiblawi, “Trump says ‘Iran appears to be standing down’ following its retaliatory attacks against Iraqi bases housing US troops,” *CNN* 8 January 2020, <<https://www.cnn.com/2020/01/07/politics/rockets-us-airbase-iraq/index.html>>.

¹⁰⁶ Catie Edmondson, “Mike Lee, a G.O.P. Senator, Calls Administration’s Iran Briefing ‘Insulting,’” *New York Times* 8 January 2020, <<https://www.nytimes.com/2020/01/08/us/politics/senator-mike-lee-iran-briefing.html>>.

horrible past!” Later in the day, in remarks to reporters before departing in Marine One, Trump charged Democrats with defending Suleimani himself. “We killed Soleimani, the No. 1 terrorist in the world by every account,” Trump said. “And when the Democrats try and defend him, it’s a disgrace to our country.”¹⁰⁷

On January 30, the House voted to repeal the Authorization of the Use of Military Force (AUMF), the joint resolution passed in October 2002 that gave then-President George W. Bush the power to strike Saddam Hussein’s Iraq and has been used by presidents ever since to justify skirting Congressional approval for Iraq-adjacent military incursions. Eleven Republicans broke ranks to vote yes, including ardent Trump supporter Rep. Matt Gaetz (R-FL). On the same day, the House passed a bill that would block federal funding for military action against Iran taken without Congressional approval, and this time four Republicans voted in favor¹⁰⁸ of deploying what is arguably Congress’ most powerful tool for countering executive power.

House Intelligence Committee Chair Adam Schiff (D-CA), who spearheaded the impeachment inquiry against President Trump, called for public hearings on the Suleimani killing, while the House Foreign Affairs Committee held two hearings in January 2020 on the administration’s Iran policy. Secretary of State Pompeo testified before House Foreign Affairs on February 28, after negotiations during which Committee Chair Eliot Engel (D-NY) made it clear he would seek Pompeo’s testimony with a subpoena if necessary.¹⁰⁹ However, during the hearing, the administration’s Iran policy was dwarfed by discussion of the coronavirus pandemic, and Pompeo limited his appearance to just two hours, which Chairman Engel called “an embarrassment.”¹¹⁰

¹⁰⁷ Remarks by President Trump before Marine One Departure, The White House, <<https://www.whitehouse.gov/briefings-statements/remarks-president-trump-marine-one-departure-81/>>.

¹⁰⁸ Juliegrace Brufke, “Here are the lawmakers who defected on Iran legislation,” *The Hill* 30 January 2020, <<https://thehill.com/homenews/house/480772-here-are-the-lawmakers-who-defected-on-the-two-iran-bills>>.

¹⁰⁹ Letter to Secretary of State Mike Pompeo from House Foreign Affairs Chair Eliot Engel, House Committee on Foreign Affairs, 16 January 2020, <https://foreignaffairs.house.gov/_cache/files/c/6/c6ac9390-8900-4c66-84d4-d0abf3355138/B1D39CDEE70FC19093BF999CE14DAE62.01-16-2020-engel-letter-to-secretary-pompeo-regarding-congressional-hearing.pdf>.

¹¹⁰ Zachary Cohen, Jennifer Hansler and Michael Conte, “Pompeo clashes with lawmakers over coronavirus and Iran in tense hearing,” *CNN* 28 February 2020 <<https://www.cnn.com/2020/02/28/politics/pompeo-iran-house-foreign-affairs-hearing/index.html>>.

In perhaps the clearest clue thus far on the unease toward Trump’s Iran policy in the Republican Party, on February 13, 2020 the Senate passed Sen. Kaine’s war powers resolution by a 55-45 vote, doubling the number of Republicans in favor of Congressional authorization for military action to eight, from four in June 2019. Trump, as promised, vetoed the joint resolution, decrying the measure as “very insulting,” while acknowledging the division it had wrought within his own party. “[This resolution was] introduced by Democrats as part of a strategy to win an election on November 3 by dividing the Republican Party,” Trump said, ignoring the fact that two members of his own party had co-sponsored the resolution. “The few Republicans who voted for it played right into their hands.”¹¹¹ The vote to override Trump’s veto failed 49-44, with seven Republicans breaking ranks to vote aye.¹¹²

For a president admittedly invested in his own public image, arguably more than any president in recent memory, criticism from within his own party has often been enough to force Trump to reconsider his more extreme proposals and amend his foreign policy strategy moving forward. Indeed, in the arena in which presidents have traditionally exercised the most power, symbolic opposition via public action may be as effective as legal constraints applied through the legislative process. Speaking on the Senate floor against the Iran War Powers Resolution, Sen. Lindsey Graham inadvertently summed up the modern futility of Congressionally imposed limits on executive military action: “If this passes, the president will never abide by it—no president would.”¹¹³ For members of Trump’s party looking to redirect policy, rhetoric in the public sphere—the press conferences, the Tweets, the Fox News interviews—may be more potent a weapon than the ability to cast votes in the people’s body.

¹¹¹ Connor O’Brien, “Trump vetoes bill to curtail his Iran war-making authority,” *Politico* 6 May 2020 <<https://www.politico.com/news/2020/05/06/trump-iran-war-veto-240793>>.

¹¹² Sen. Jerry Moran (R-KS) voted in favor of the resolution itself but did not take part in the veto override attempt.

¹¹³ Catie Edmiston, “In Bipartisan Bid to Restrain Trump, Senate Passes Iran War Powers Resolution,” *New York Times* 13 February 2020, <<https://www.nytimes.com/2020/02/13/us/politics/iran-war-powers-trump.html?action=click&module=Top%20Stories&pgtype=Homepage>>.

Conclusion

As of December 2020, all policymaking, foreign and domestic, has taken a backseat to COVID-19. Democrats in Congress succeeded in attaching strict(er) oversight requirements to the massive economic stimulus bill passed in March, only for President Trump to announce his intent to ignore them. In May, Trump announced that Dr. Anthony Fauci, the infectious disease expert tasked with coordinating the White House's coronavirus response, would testify before Congress as members had requested—but only in the chamber controlled by Republicans. “The House is a set-up,” Trump told reporters. “The House is a bunch of Trump haters. They put every Trump hater on that committee,”¹¹⁴ referring to the House's new Oversight and Reform Select Subcommittee on the Coronavirus Crisis.

Speaker Pelosi announced the creation of the select subcommittee on April 2 and, in its first official action, the panel sent letters to five large companies demanding the return of coronavirus relief aid earmarked for small businesses. At its first meeting on May 13 via teleconference, academics and former government officials examined how to reopen the economy, while the subcommittee's Republican members convened in the Capitol and criticized the Democrats for failing to show up in person.¹¹⁵ The next day, the House Energy and Commerce Committee heard from Dr. Rick Bright, the former head of the federal agency tasked with vaccine development who claimed he had been fired for refusing to support an unverified COVID treatment. After a historic House rules change permitted members to vote and conduct hearings remotely, the House select subcommittee held a second briefing at which several essential workers described the front lines of the crisis. Meanwhile, Dr. Fauci, Federal Reserve Chairman Jerome Powell and Treasury Secretary Steven Mnuchin all testified before the Senate.

An unprecedented global health crisis has not drastically changed the institution of oversight for either Congress or the administration; instead, Congressional oversight of

¹¹⁴ Brett Samuels, “Trump won't allow Fauci to testify before House because it's ‘a bunch of Trump haters,’” *The Hill* 5 May 2020 <<https://thehill.com/homenews/administration/496133-trump-wont-allow-fauci-to-testify-before-house-because-its-a-bunch-of>>.

¹¹⁵ Kyle Cheney, “Bipartisan vow masks a rancorous reality for coronavirus oversight panel,” *Politico* 13 May 2020 <<https://www.politico.com/news/2020/05/13/oversight-aid-coronavirus-256996>>.

the administration's coronavirus response follows familiar patterns. Trump has used the pandemic as an excuse to double down on the strategy of non-engagement with House Democrats he'd employed throughout most of 2019; as a result, House investigators have been forced to keep watch over the administration obliquely, focusing on private-sector recipients of Treasury-disbursed relief funds and relying on former officials and front-line workers to construct a record of the administration's lackluster response. By presenting credible and sympathetic witnesses on a public stage, House Democrats are attempting to leverage public pressure to keep the administration in check while Congressional Republicans recognize that their support is an increasingly valuable political commodity and can be deployed, or withheld, to maximum effect. The Republican National Senatorial Committee, for instance, has already instructed 2020 candidates to refrain from defending Trump even as they shift the blame for the pandemic toward China.¹¹⁶

In 1885, Woodrow Wilson declared it "quite evident that the means which Congress has of controlling the [executive] departments and of exercising the searching oversight at which it aims are limited and defective."¹¹⁷ In the 130 years since, the desuetude of Congress' own enforcement mechanisms coupled with the general reluctance of the courts to mediate executive-legislative disputes has only underscored the reality that oversight works because of the president's cooperation, rather than in spite of it. Trump's belief that he can pick and choose exactly which Congressional requests for information are legitimate, even as the nation wades through an unparalleled public health crisis, has laid bare Congress' institutional weaknesses and has also belied the courts' theory that oversight disputes can be finessed through good-faith negotiation. Most importantly, however, the Trump era has made it all the more clear that Congress is a maladaptive institution, able to do little more than re-enact the usual playbook when faced with an unorthodox president.

Congress' main oversight tools have not changed under Trump: This speaks on the one hand to the legislature's ability to chug along regardless of developments in the

¹¹⁶ Colby Itkowitz, "Republican strategy memo advises GOP campaigns to blame China for coronavirus," *Washington Post* 25 April 2020 <<https://www.washingtonpost.com/politics/2020/04/25/senate-gop-talking-points-coronavirus-blame-china-not-trump/>>.

¹¹⁷ Woodrow Wilson, *Congressional Government*, 154.

other branches of government, but also exposes the legislature's institutional creakiness, its utter inability to change tactics when the behavior of other institutions demands it. The Trump era has made clear that oversight scholars should expand their analytical fields beyond the legislature and instead assess oversight as a cross-government institution that has always depended upon a delicate inter-branch balancing act.

The president cannot destroy oversight on his own, and Congress and the courts have demonstrated their ability to resist Trump's attacks in multiple ways. But the institutional fault lines exposed by the Trump administration aren't going away, and only the steadfast vigilance and commitment of *both* of the other two branches to Congress' investigative powers will be sufficient to stave off an earthquake.