

## ROADMAP FOR RENEWAL

### Strengthen Congress's Capacity to Fulfill its Constitutional Role

#### **IV. Build Congressional capacity to conduct bipartisan, professional oversight of the Executive Branch**

The Constitution provides Congress the power to conduct oversight and investigations of the President's execution of the law, including abuses of executive power and the weakening of important norms and laws. That is because, in the words of the Supreme Court, the "power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function." To craft effective legislative solutions, Congress first must understand the problems in our democracy. In recent years, however, Congress has too often abdicated its legitimate oversight role in order to engage in partisan street-fighting.

In order to build capacity to engage in effective oversight of the executive branch, Congress should:

- Create a Congressional Oversight Office with dedicated funding and staff to support oversight efforts;
- Align authorizing and oversight committee jurisdiction with the structure of the federal government;
- Leverage a broader range of expertise into the oversight process; and
- Increase the capacity of members of the House Intelligence Committee to engage in oversight.

#### **The Problem**

Congressional oversight is decreasing. According to research by [Brooking's Elaine Kamarck](#),<sup>1</sup> Congressional oversight hearings peaked in 1978 and have fallen continuously since then, with a brief uptick after Democrats won the House in 2006. While a House from the same party as the Executive is unlikely to generate significant oversight activity, the Republican-led committees of the 115<sup>th</sup> Congress have investigated very few pressing issues related to the Trump Administration. As of July, [Republicans had denied 52 subpoena requests by the Democrats](#).<sup>2</sup>

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<sup>1</sup> Karmack, Elaine, *A Congressional Oversight Office: A Proposed Early Warning System for the United States Congress*, Brookings (June 3, 2016). Available at <https://www.brookings.edu/research/a-congressional-oversight-office-a-proposed-early-warning-system-for-the-united-states-congress/>.

<sup>2</sup> Ashley Killough, *House Democrats eye possible investigations if they take back the house*, CNN (September 5, 2018). Available at <https://www.cnn.com/2018/09/05/politics/house-democrats-congress-investigations/index.html>.

Congressional oversight has not expanded to accommodate changes and growth in the federal government. Part of the challenge is that since Congress last reorganized itself in 1970 with the Legislative Reorganization Act, there has been substantial change in the federal government. The last substantial reorganization was in 1946 in tandem with the post-World War II reforms that restructured the national security apparatus, creating the Department of Defense and the Central Intelligence Agency. As [Norm Ornstein and Thomas Mann](#) have noted, after the largest reorganization of the federal government in modern history—the creation of the Department of Homeland Security—there was no effort to restructure Congress to more adequately oversee the new department.<sup>3</sup>

As Congress and the federal government have changed, so too has the world around it. Technology has created an availability of massive amounts of information and expertise that Congress could leverage as part of its oversight role, but it has not reformed or updated the Congressional hearing process to allow it to effectively source insights from experts around the country.

Review of the Intelligence Community (IC) provides a unique challenge to Congress and the IC itself. The IC oversight system has broken down in recent years due to the IC withholding some information from Congress and politicization by Congress. The Snowden revelations made clear that significant intelligence information was being withheld from Congress without their knowledge. House Intelligence Chairman Devin Nunes cooperated with the White House to release and politicize intelligence against the wishes of the IC.

## Proposed Solutions

### **Create a Congressional Oversight Office with dedicated funding and staff to support oversight efforts**

- Elaine Kamarck at the Brookings Institution has recommended a Congressional Oversight Office that would increase oversight capacity and institutionalize resources and expertise for oversight outside of partisan Congressional staff.

### **Align authorizing and oversight committee jurisdiction with the structure of the federal government**

- Kevin Kosar from the R Street Institute and Lee Drutman from the New America Foundation have [recommended a new Legislative Reorganization Act](#), modeled on the ones of 1946 and 1970.<sup>4</sup> This would align Congressional committees with federal government structures to ensure expertise.

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<sup>3</sup> Norman Ornstein and Thomas E. Mann, *The Broken Branch: How Congress is Failing America and How to Get It Back on Track*, Brookings (June 27, 2006). Available at <https://www.brookings.edu/articles/the-broken-branch-how-congress-is-failing-america-and-how-to-get-it-back-on-track/>.

<sup>4</sup> Lee Drutman and Kevin R. Kosar, *The Other Biggest Problem in Washington*, *The New York Times* (Sep. 11, 2018). Available at <https://www.nytimes.com/2018/09/11/opinion/congress-senate-house-washington.html>.

### **Leverage a broader range of expertise into the oversight process**

- Georgetown's Beeck Center for Social Impact + Innovation and University of New Hampshire's Carsey Public Policy School have developed a digital field hearing toolkit to source ideas from experts in Congressional districts, especially land grant universities and local elected officials.<sup>5</sup>

### **Increase the capacity of members of the House Intelligence Committee to engage in oversight**

- An ideologically diverse set of organizations has [recommended several changes to intelligence oversight](#) that would: modernize the House Permanent Select Committee on Intelligence (HPSCI); empower members of Congress to conduct intelligence oversight with additional training, staff, and clarification regarding what is and isn't public information; and establish a broad-based review of congressional oversight structures.<sup>6</sup>
- End leadership appointment to HPSCI and term limits of HPSCI members<sup>7</sup>, as recommended by the 9/11 Commission.<sup>8</sup>

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<sup>5</sup> Austin Seaborn, *Crowdsourcing Expertise to Increase Congressional Capacity*, Beeck Center (July 21, 2017). Available at: <http://beeckcenter.georgetown.edu/crowdsourcing-expertise-increase-congressional-capacity/>.

<sup>6</sup> *Strengthening Congressional Oversight of the Intelligence Community*, R. Street (Sep. 13, 2016). Available at: <http://www.rstreet.org/wp-content/uploads/2016/09/intelligence-oversight.pdf>.

<sup>7</sup> Why are Reps. Clamoring to Join the House Intelligence Committee?, Lawfare (Nov. 5, 2018). Available at <https://www.lawfareblog.com/why-are-reps-clamoring-join-house-intelligence-committee>.

<sup>8</sup> Thomas H. Kean and Lee Hamilton. *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States*, Washington, D.C.: National Commission on Terrorist Attacks upon the United States (2004). Print.