

# Agency Problems, Bureaucratic Policy, and Legislative Oversight

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## Abstract

Lodging authority over public policy in the executive branch creates an agency problem for Congress. A natural view of legislative oversight is as a tool to mitigate this agency problem. We formalize this interpretation of oversight at the committee level and test several implications of the model. Using a newly collected dataset that spans 1983-2010, we find that committee oversight is increasing in *(i)* policy making activity by agencies under the committee's jurisdiction; *(ii)* policy disagreement between the executive branch and Congress; and *(iii)* the internal disagreement among multiple committees overseeing the same agency. The results suggest that individual committees use oversight to influence the actions of executive agencies, including the content of public policy after legislative enactment.

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Major pieces of legislation typically leave important details to be worked out by bureaucratic agencies. For example, the Patient Protection and Affordable Care Act delegates to the Secretary of Health and Human Services everything from the reimbursement structure for insurance companies, to determination of reasonable rate increases, to the establishment of a high risk health insurance pool. Because agency employees are subject-area experts, congressional delegation can result in more efficient and expert policies. The costs of congressional delegation to agencies are well theorized: When it delegates to agencies, Congress entrusts policy-making authority to actors with different goals and conceptions of good public policy, and a weaker connection to the electorate, than Congress itself. An agency problem results. Oversight is a potentially important channel for mitigating Congress's agency problem and therefore for bolstering the democratic accountability of agency policy-making.

Scholars have not systematically connected the oversight activity of Congress to the democratic problems created by delegation. The landmark analysis of Aberbach (1990) remains the definitive work on the oversight activity of Congress (supplemented and extended in Aberbach (2002)), but Aberbach's empirical analysis and major conclusions place oversight in a framework centered on Congress and the broad contours of the national policy-making environment. Oversight's costs and benefits are understood by Aberbach in terms of resources available to congressional committees, such as staff sizes; and the wider constraints Congress faces in fashioning new policy initiatives, such as budget deficits. Aberbach argues that both the resources available for legislative oversight of bureaucracy and the costs of building grand new policy initiatives contributed to the growth of oversight ac-

tivity through the 1970's and 1980's. Thus his account emphasizes factors internal to Congress and the wider policy environment as determinants of oversight.

To date, scholars have largely neglected the influence of conflict between agencies and committees on oversight incentives and activity. Temporal variation in oversight activity may be intelligible in terms of incentives, resources, and constraints faced by Congress, but we do not know whether it is related to the agency problems Congress faces when delegating to the bureaucracy. If the relationship between agency-committee conflict and oversight is weak, then oversight may well serve legislators' incentives without simultaneously reducing the democratic problems created by delegation. In other words, oversight may amount to position-taking rather than a device to enhance agency accountability. Even the substantial growth in oversight hearing activity that Aberbach documents would not reflect a coherent effort at mitigating accountability problems; it would instead be at best an incidental side effect of a choice with a logic independent of making delegation more democratic. On the other hand, a finding that oversight activity within the legislature is intelligible in light of the agency problems Congress faces due to delegation, would help to reconcile the challenges brought about by institutional design of the less-accountable but more-expert bureaucracy with the more-accountable but less-expert legislature.

The normative importance of oversight stems in part from its potential value in mitigating agency losses Congress faces when delegating to the bureaucracy.<sup>1</sup> In a number of theoretical accounts and some empirical work, legislative oversight

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<sup>1</sup>Part of the interest in oversight stems from an interest in Congress and the activities of its members per se. Simply put it is interesting to explore what they are up to and what causes changes in their activities. This is the predominant orientation of the oversight literature, but it is not the orientation of this paper.

has been conceptualized in this way. One of the first and probably the most important such accounts is McCubbins and Schwartz (1984), who created the concept of “fire alarm” vs. “police patrol” oversight. This distinction was invented on the heels of substantial concern and criticism about abdication of authority and responsibility for making hard programmatic choices by Congress, and Congress’s failure to engage in comprehensive and sustained oversight of the many programs and agencies it created following World War II, as directed in (e.g.) the Legislative Reorganization Act of 1946 (*cf.* Ogul (1976)). The great value of the fire alarm–police patrol distinction is that it places oversight in the broader context of an agency problem (though that is not the operative language in the original article), and shows that there are multiple instruments available to a principal seeking to solve or mitigate that problem. In that light, the important point is that the principal must choose some instruments of influence over policy and mitigation of agency loss, not that it must choose all of them.

That the principal must choose from among a variety of instruments provides a link between the choice of various *ex ante* and *ex post* controls over agency policy choices. For example, oversight ensures suitable choices and checks for problems after agency policy decisions have been made (an *ex post* approach); statutory discretion and institutional design are useful for tilting the analysis of choices and tradeoffs made by agencies in the first place (an *ex ante* approach) (Weingast and Moran (1983); McCubbins, Noll and Weingast (1987), McCubbins, Noll and Weingast (1989); Calvert, McCubbins and Weingast (1989); Banks and Weingast (1992); Kiewiet and McCubbins (1991); Epstein and O’Halloran (1999); Bawn (1997)). These are all in part fungible approaches to achieving the same

goal: influence and direction of public policy that nevertheless acknowledges the expertise that agencies bring to the table.<sup>2</sup>

Congress can take a number of different routes to achieve the optimal mix of legislative control and agency loss. Even among ex post controls, oversight activity conducted formally in Congress and on the record is by no means the only route. Yet as Aberbach demonstrates, and our newly collected data also confirms, Congress in fact does a fair amount of it. Bawn (1997) shows that legislators treat oversight strategically, in that preferences over ex ante versus ex post controls over bureaucratic policy-making are in part affected by whether a legislator sits on committees in Congress with oversight jurisdiction.<sup>3</sup> Epstein and O'Halloran (1999) show that a measure of oversight hearing activity is negatively associated with passage of major laws that delegate authority to agencies, perhaps because such oversight supplies information to committees that alleviates the need to take advantage of bureaucratic expertise. Clearly, then, a comprehensive understanding of the extent to which Congress confronts the agency problem that delegation creates, and how it addresses its agency problem, requires an understanding of oversight behavior in general, and in the context of the agency problem.

In short, Congress does not have to use formal oversight per se to address its agency problem in the bureaucracy, but it does use formal oversight quite regularly for something. If that something is connected to control of delegated authority,

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<sup>2</sup>The fungibility of ex post and ex ante “controls” is even more obvious when one considers that the expectation of being subject to ex post controls affects the decisions bureaucrats might make in the first place, just as ex ante controls might.

<sup>3</sup>Specifically, Bawn shows that legislators on a committee with oversight jurisdiction over a program vote to tilt the mix of control mechanisms toward the ex post variety, giving these legislators a disproportionate influence over the ultimate policy. Legislators not having oversight jurisdiction vote to tilt the mix toward ex ante controls.

then oversight can be considered as a useful element among a set of tools to enhance the compatibility of democratic and administrative policy-making.

The purpose of this paper is to explore the connection, if any, between formal oversight and control of delegated authority for policy-making. We present a theory of oversight that places democratic problems created by delegation at its center. The costs and benefits of oversight in this theory are based on conflict between committees and agencies. The three implications that we distill from the theory are that oversight levels will be *(i)* increasing in the level of activity of an agency, *(ii)* increasing in the policy conflict between a committee and an agency, and *(iii)* increasing in the internal disagreement among multiple committees overseeing the same agency. We test the empirical implications of this theory on a new panel dataset of legislative oversight spanning from 1983-2010. Like Aberbach (1990), we treat on-the-record oversight activity as conducted in congressional hearings as the operational measure of oversight.

Our results are encouraging when viewed with a concern for democratic accountability of agency policy-making. They are consistent with our theory, which suggests that formal oversight by congressional committees is indeed connected to the agency problem that Congress faces in the bureaucracy. But our results also turn up evidence that committees may compete on oversight in an “arms race” pattern. This competition over oversight could lead to Congress providing more oversight than would be ideal from the perspective of obtaining a democratically accountable arrangement of policy outcomes.

# 1 Model and Hypotheses

The theory on which the empirical analysis below is built takes as given an agency problem between Congress and the bureaucracy. There are many possible reasons for the agency problem but the basic point is this: Different parts of Congress and various bureaucratic agencies will often have different ideas of what makes for good public policy. They may each have sensible reasons, in terms of constituency preferences or technical analysis of the policy problem or simply their own ideologies, but the basic point is only that they may want different things.

Since bureaucrats are often called to execute laws as well as to write laws (or their functional equivalent) in the first place, they have inherent opportunities to bend public policy in the direction of their preferred alternatives. Many approaches exist for Congress to try to limit or prevent agencies from bending policy. One such approach is legislative oversight, including the kind that takes place on the record and in legislative hearings. Oversight hearings are one way for the individual legislators and committees participating in them to bend public policy back in their preferred direction and away from the agency's, or the President's, or even other subsets of Congress not involved in the oversight hearing in question.

Thus, oversight is modeled here as having an effect on final content of public policy, after bureaucrats have chosen a policy to (attempt to) implement. Our approach is clearly not the only way to think about the effects of oversight, but it is simple, concrete, and allows an explication of the view of oversight as an ex post tool to influence policy outcomes.

To capture this formally, consider a game with an agency  $A$  and two committees,  $C_1$  and  $C_2$ . Policies are chosen from the real number line  $\mathbb{R}$ . There is an

exogenous status quo policy  $q \in \mathbb{R}$ . Each player has symmetric and single peaked preferences over policies, with an ideal point denoted  $\hat{x}_A, \hat{x}_1, \hat{x}_2$  respectively. Without loss of generality, assume that  $\hat{x}_A = 0$  and that  $\hat{x}_2 > \hat{x}_1$ , and let  $\mu = \frac{\hat{x}_2 + \hat{x}_1}{2}$  be the midpoint between the committee ideal points. Further assume (with loss of generality) that  $\hat{x}_1 < \hat{x}_A = 0 < \hat{x}_2$ .<sup>4</sup>

The sequence is as follows. First,  $A$  makes a commonly observed choice of whether to initiate policy change ( $P = 1$ ) or not ( $P = 0$ ). If  $P = 0$ , the game ends and the final policy is  $q$ . If  $P = 1$ ,  $A$  chooses a policy  $x_A \in \mathbb{R}$  (which need not equal  $\hat{x}_A$ ). Then without observing<sup>5</sup>  $x_A$ ,  $C_i$  allocates 1 unit of time to oversight  $s_i \geq 0$  and non-oversight business  $t_i \geq 0$ , simultaneously with  $C_j$ .  $C_i$  then observes  $x_A$  with probability  $s_i$ .

If  $P = 1$  so the agency initiates policy change, final policy  $x$  is determined as follows. If only  $C_i$  observes  $x_A$ , policy is  $x = \hat{x}_i$ . If both  $C_i$  and  $C_j$  observe  $x_A$ , then  $x = \mu$ . If neither committee observes  $x_A$ , then  $x = x_A$ . If  $P = 0$ , as noted,  $x = q$ .

The utility function for committee  $i$  is  $U_i = b(t_i) - d(|x - \hat{x}_i|)$ , where  $d$  is a continuously differentiable function such that  $d > 0$ ,  $d' > 0$ , and  $d'' > 0$  (*e.g.*, Euclidean distance), and  $b$  is a continuously differentiable function such that  $b' > 0$  and  $b'' < 0$ . Thus, utilities depend on policy through a standard spatial distance measure, and on the value of time for non-oversight activities. This value increases at a decreasing rate. Since  $s_i + t_i = 1$ , the function  $b$  can equally well be thought

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<sup>4</sup>Assuming that committees have ideal points on opposite sides of  $A$  is useful to rule out coordination issues in selecting efficient equilibria of a collective action game that the committees would face, if they desired movement from  $A$  in the same direction.

<sup>5</sup>The game and results are actually identical if  $C_i$  can observe  $x_A$ , as will be explained briefly. The assumption of unobservable  $x_A$  somewhat enhances the substantive motivation.



to capture the opportunity cost of oversight in a convex function. Non-oversight activity is valuable to the committees because they can use it on drafting and analyzing legislation, constituency service to aid in reelection, fundraising, or hobnobbing with lobbyists. Time taken from those activities alone makes oversight costly.<sup>6</sup>

The utility function for  $A$  is  $U_A = -d(|x - \hat{x}_A|) - v(s_1 + s_2)$ , where  $d$  is the same distance metric specified above and  $v$  is a continuously differentiable function such that  $v' > 0$  and  $v'' > 0$ . This function reflects the assumption that oversight is costly for agencies. There are several reasons for this, including diverting staff time from program implementation and maintenance to preparing for oversight hearings, as well as the possible reputational costs for agencies if they are subject to withering contumely at the hands of congressional committees. Besides the representation and interpretation of costs of experiencing or engaging in oversight, the agency and committees are the same in the sense that they are policy motivated.

When the committees choose oversight levels, they choose in ignorance of the game's history up to that information set. So the natural equilibrium concept is sequential equilibrium. However, since  $C_i$  cannot update any beliefs about  $A$ 's choice at the time it chooses  $s_i$ , there is no need to specify  $C_i$ 's beliefs off the equilibrium path. Indeed, since there is uncertainty about preferences, equilibrium requires that  $C_i$  form a belief about  $A$ 's choice  $x_A$  that places probability 1 on the value which  $A$  actually chooses. For this reason, the model is identical whether  $C_i$

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<sup>6</sup>To say nothing of actual resource costs of oversight, which are not modeled here and therefore can be thought of as borne by the whole Congress, not internalized by a given committee.

can or cannot observe  $x_A$  at the time it chooses  $s_i$ . The SPNE with observability is the same.

As  $C_i$  chooses  $s_i$ , and taking  $s_j$  and  $x_A$  as given, the probability distribution over  $d(|x - \hat{x}_i|)$  is

$$d(|x - \hat{x}_i|) = \begin{cases} 0 & \text{with probability } s_i(1 - s_j) \\ d(|\hat{x}_2 - \hat{x}_1|) & \text{with probability } s_j(1 - s_i) \\ d(|x_A - \hat{x}_i|) & \text{with probability } (1 - s_1)(1 - s_2) \\ d(|\mu - \hat{x}_i|) & \text{with probability } s_1s_2. \end{cases} \quad (1)$$

Thus  $C_i$ 's objective function is

$$EU_i(s_i) = b(1 - s_i) - s_1s_2d(|\mu - \hat{x}_i|) - s_j(1 - s_i)d(|\hat{x}_2 - \hat{x}_1|) - (1 - s_1)(1 - s_2)d(|x_A - \hat{x}_i|). \quad (2)$$

Because of the curvature of  $b(\cdot)$ ,  $EU_i$  is strictly concave in  $s_i$ . With appropriate Inada-type conditions, a unique interior optimum exists,  $s_i^*(s_j, x_A)$ , for  $i \in \{1, 2\}$ . These  $s_i^*$  functions represent the best response functions for the respective committees.

Taking these best responses  $s_i^*$  as given,  $A$ 's objective function is

$$\begin{aligned} EU_A(x_A) = & -s_1^*(1 - s_2^*)d(|\hat{x}_1 - \hat{x}_A|) - s_2^*(1 - s_1^*)d(|\hat{x}_2 - \hat{x}_A|) \\ & -s_1^*s_2^*d(|\mu - \hat{x}_A|) - (1 - s_1^*)(1 - s_2^*)d(|x_A - \hat{x}_A|) \\ & -v(s_1^*(x_A) + s_2^*(x_A)), \end{aligned} \quad (3)$$

with an optimum denoted  $x_A^*(s_1^*(x_A), s_2^*(x_A))$ .

Given agency policy-making ( $P = 1$ ), the sequential equilibrium consists of simultaneous solutions of  $s_1^*(x_A)$ ,  $s_2^*(x_A)$ , and  $x_A^*(s_1^*(x_A), s_2^*(x_A))$ , in terms of the exogenous variables  $\hat{x}_1, \hat{x}_2, \hat{x}_A$ .

For the empirical analysis, several aspects of the equilibrium are crucial. The first is analytically trivial but substantively important. If  $P = 0$  so that  $A$  keeps the status quo in place, there is nothing for oversight to do, and it carries an opportunity cost, so no oversight occurs. As agencies engage in more policy making activity, there is at least some incentive for oversight. We refer to this as the **agency activity hypothesis**.

**Proposition 1.** For each committee  $C_i$ ,  $i \in \{1, 2\}$ ,  $s_i^*(P)$  is weakly increasing: oversight levels are increasing in agency policy making activity.

Other properties of the equilibrium are instances of monotone comparative statics. First,  $EU_i(s_i)$  clearly follows a single crossing property with respect to  $\hat{x}_i$ . Specifically, as  $|\hat{x}_i|$  increases, the value of oversight for  $i$  increases as well. This change in ideal point does not affect the marginal cost of oversight (given by the function  $b$ ), but does affect the marginal benefit. When  $|\hat{x}_i|$  grows (either  $\hat{x}_2$  grows above or  $\hat{x}_1$  shrinks below 0),  $d(\cdot)$  increasing implies it is relatively more beneficial for  $i$  to obtain marginal movements from  $x_A$  toward  $\hat{x}_i$ . This complementarity is identified in the cross partial of the objective function  $EU_i$ . For  $C_1$ ,

$$\frac{\partial^2 EU_1}{\partial s_1 \partial \hat{x}_1} = s_2(d'(\frac{\hat{x}_2 - \hat{x}_1}{2}) - d'(\hat{x}_2 - \hat{x}_1)) - (1 - s_2)d'(x_A - \hat{x}_1) < 0. \quad (4)$$

Recall that  $d' > 0$ , so  $-d' < 0$  in each term. The first term is negative because  $\hat{x}_2 > \mu$  and  $d'' > 0$ , so that the overall cross partial is negative too. Since  $\hat{x}_1 < 0$  by assumption, this also means that  $\frac{\partial^2 EU_1}{\partial s_1 \partial |\hat{x}_1|} > 0$ , which is a complementarity condition that is sufficient for a monotone comparative static of  $s_i^*$  with respect to  $|\hat{x}_i|$ . An analogous derivation holds for  $C_2$ .

Furthermore, since  $\hat{x}_A = 0$  by assumption,  $|\hat{x}_i|$  captures the ideological conflict between  $C_i$  and  $A$ . This leads to the following proposition.

**Proposition 2.** For each committee  $C_i$ ,  $i \in \{1, 2\}$ , and holding fixed  $\hat{x}_j$ ,  $s_i^*(|\hat{x}_i|)$  is weakly increasing: oversight levels are increasing in ideological distance between  $C_i$  and  $A$ .

We refer to this result as the **agency policy conflict hypothesis**. Since oversight is imperfect at moving policy in this model, principals cannot fully eliminate an agent's ability to act on its own preferences rather than the principal's. The greater the divergence or conflict between the most preferred decisions of the principal and the agent, the greater the agency loss. This, in turn, raises the value of tools that can mitigate agency loss, such as oversight, and should make them used more often. Therefore, greater conflict in policy goals between Congress and agencies should be associated with more oversight.

Another important hypothesis concerns the interaction, or competition, between committees to influence the final policy implemented by  $A$ . To establish this, consider another single crossing property in  $EU_i$ : this time between  $s_1$  and  $\hat{x}_2$ . For concreteness, consider the analysis from  $C_1$ 's point of view; it is similar from  $C_2$ 's. The first derivative is

$$\frac{\partial EU_1}{\partial s_1} = s_2(d(\hat{x}_2 - \hat{x}_1) - d(\mu - \hat{x}_1)) - (1 - s_2)d(x_A - \hat{x}_i). \quad (5)$$

Signing the derivative of the second term with respect to  $\hat{x}_2$  is straightforward because  $s_2$  increases with  $\hat{x}_2$  (proposition 1). Note again that because  $d'' > 0$  and  $\hat{x}_2 > \mu$ , the term  $(d(\hat{x}_2 - \hat{x}_1) - d(\mu - \hat{x}_1))$  is also increasing in  $\hat{x}_2$ . So the first term is the product of two terms, both increasing in  $\hat{x}_2$ . Therefore,

$$\frac{\partial EU_1}{\partial s_1 \partial \hat{x}_2} > 0, \quad (6)$$

which ensures a monotone comparative static of  $s_i^*$  with respect to  $\hat{x}_2$ . There are two effects behind this. First, increasing  $\hat{x}_2$  increases  $C_2$ 's oversight  $s_2$ , which raises the chance of undesirable outcomes for  $C_1$ , and to counterbalance this possibility,  $C_1$  has an incentive to engage in more oversight. Second, even fixing  $s_2$ , an increase in  $\hat{x}_2$  makes some of the policy outcomes less desirable for  $C_1$ , while making none more desirable. So  $C_1$  increases  $s_1$  to lower the chance of these events.

Since  $s_1(|\hat{x}_1|)$  is increasing per proposition 1, we obtain the following result.

**Proposition 3.** For each committee  $C_i$ ,  $i \in \{1, 2\}$ ,  $s_i^*(|\hat{x}_2 - \hat{x}_1|)$  is weakly increasing: oversight levels are increasing in ideological distance between  $C_1$  and  $C_2$ .

We refer to this as the **common agency hypothesis**. Multiple principals in Congress possess autonomous authority to initiate oversight proceedings. Unlike passing a law, which requires concerted action and agreement among veto players in Congress, oversight hearings require only a group of legislators on a single committee with the desire to hold them.

Therefore, common agency considerations can also bear on incentives for oversight. If oversight can affect agency actions, and principals disagree about the desired actions, then individual principals have greater incentives to use oversight to bend agency actions in their preferred direction.<sup>7</sup>

There are two reasons for the effect: first, disagreement among principals can make it more difficult to pass statutes directing agency actions, thereby closing off one channel for mitigating agency loss — and making other channels more valuable to all principals. Clearly, this increases the incentives for individual committees to engage in oversight, and indeed is closely related to previous arguments about incentives for oversight and the difficulty of passing new initiatives (Aberbach (1990)). Since lawmaking is not part of our analysis, our model does not capture this effect per se.

Second, if one principal engages in oversight and thereby influences agency actions, a competing principal with a different desired action has an incentive to engage in oversight activity itself, to reduce or “undo” the effects on the agent of the oversight activity of the first principal.<sup>8</sup> This is the effect captured in our model.

Congress can have internal policy conflict within a chamber or across chambers.

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<sup>7</sup>Gailmard (2009) also studies common agency and legislative oversight. In that model the multiplicity of principals reduces incentives for legislative oversight, for a fixed level of preference conflict among them. The reason is that for a given level of preference conflict over agent policy choices (to wit, zero in Gailmard (2009)), oversight is a public good among the principals and as such is underprovided. In both that model and the implicit model considered here, increased preference conflict among a fixed number of principals increases incentives for oversight.

<sup>8</sup>Whitford (2005) demonstrates a similar effect, with the President and Congress as the principals, on attempts to influence EPA decision making. While oversight is not one of the control instruments available in his data, the underlying logic of his argument is similar.

The common agency arguments above apply to each. Therefore, policy conflict between the Senate and the House should, all else constant, increase both House and Senate oversight activity. Greater policy conflict within the House should also increase House oversight activity, and the same goes for the Senate.

The common agency hypothesis is somewhat more delicate, from the standpoint of democratic accountability, than the agency activity and agency policy conflict hypotheses. For those two, one can interpret oversight as a means to mitigate agency loss faced by Congress as a whole, and given that body's democratic pedigree, one can interpret minimized agency loss as desirable. But the common agency hypotheses suggest that a chamber or a unit of Congress may be something like the Red Queen, and faster running simply increases the speed of the treadmill for other units of Congress. In other words, if oversight helps to counteract efforts of other units in Congress to influence agencies, then collectively Congress may in fact provide too much of it. First, the opportunity cost of legislative time spent on oversight just to forestall the effects of oversight by other legislative units is probably not zero; second, this "arms race" pattern of oversight could contribute to a more contentious political climate around program implementation than is necessary to obtain a particular arrangement of policy outcomes.

## **2 Data**

### **2.1 New Oversight Hearing Data**

Using the Congressional Information Service's (CIS) public records of hearings, we scraped the text of CIS's public record for each hearing containing synonyms

of and variations of the word “oversight,” as well as synonyms and variations of words indicating problems, such as “waste” and “fraud.”<sup>9</sup>

To make it into our dataset, CIS hearing records had to mention at least one administrative agency.<sup>10</sup> We also record whether a hearing involved at least one agency staff person giving testimony and whether the agency was mentioned in the title or brief summary of the hearing record in particular. A team of undergraduate researchers read the hearing records to make a judgement call as to whether or not the hearing was overseeing an administrative agency.<sup>11</sup> Given all of this, we can define oversight hearings in the following ways (or combinations of the following ways): 1) hearings that mention an agency anywhere in the CIS hearing record, 2) hearings that mention an agency in the title or brief summary of the CIS hearing record, 3) hearings that have at least one agency staff person giving testimony,

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<sup>9</sup>On Lexis Nexis, we used the following search: TITLE (REFORM! or (RECOMMEND! w/3 (REVIS! OR CHANGE! OR REFORM!)) or FUTURE or OVERSIGHT or REVIEW! or ’s w/4 BUDGET!” or ABOLISH! or NEED! or MANAG! or WASTE! or FRAUD! or ABUS! OR INSPECT! or INQUIR! or OVERVIEW! or EXAMIN! or LOOK or ASSESS! or RE-ASSESS!) OR DESCRIPTORS (REFORM! or (RECOMMEND! w/3 (REVIS! OR CHANGE! OR REFORM!)) or FUTURE or OVERSIGHT or REVIEW! or ’s w/4 BUDGET!” or ABOLISH! or NEED! or MANAG! or WASTE! or FRAUD! or ABUS! OR INSPECT! or INQUIR! or OVERVIEW! or EXAMIN! or LOOK or ASSESS! or RE-ASSESS!) OR SUMMARY (REFORM! or (RECOMMEND! w/3 (REVIS! OR CHANGE! OR REFORM!)) or FUTURE or OVERSIGHT or REVIEW! or ’s w/4 BUDGET!” or ABOLISH! or NEED! or MANAG! or WASTE! or FRAUD! or ABUS! OR INSPECT! or INQUIR! or OVERVIEW! or EXAMIN! or LOOK or ASSESS! or RE-ASSESS!) AND NOT SOURCE (APPROPRIATION!). We have excluded Appropriations Committees in both the House and the Senate. One extension of the analysis that we present here would be to include these.

<sup>10</sup>We note that we only searched for mentions of the names of independent agencies, cabinet departments, and executive agencies. This means that if a subagency within a cabinet department was mentioned but the overarching cabinet department was not, it would not make it into our dataset.

<sup>11</sup>The percent overlap between two coders on a sample of our data was 77%. The Cohen’s  $\kappa$ , which adjusts for overlap by chance, was .55, which those who have suggested guidelines for interpreting Cohen’s  $\kappa$  have described as “moderate” or “fair to good” (Landis, Koch et al. (1977); Fleiss, Levin and Paik (1981)).



and 4) hearings that mention an agency and that were hand coded as overseeing that agency.

Our dataset is at the agency-committee pair level by year and spans from 1983-2010. Hearing information included in the dataset includes the committee or committees holding the hearing, the agency or agencies mentioned in the record of the hearing, whether each agency was mentioned in the title or summary in particular, whether each agency had a staff person giving testimony, descriptions of the content of the hearing, all dates on which the hearing took place, the dates that each witness testified, the subject matter of the witness testimonies, all of the witnesses and their affiliations, and the hand-coded oversight designation.

In order to account for a committee’s decision not to oversee an agency, we include in the dataset every possible agency-committee pair in every year. Since committees can choose to oversee any agency that they wish to oversee, we paired all committees with all agencies in our dataset.<sup>12</sup>

## 2.2 Additional Data

For our measure of agency activity we use data from O’Connell (2008, 2011) on agency rule making. O’Connell constructed a database of agency rule making from the Unified Agenda of Federal Regulatory and Deregulatory Actions, which is published in the Federal Register twice per year. O’Connell’s database contains dates of important components of the rulemaking process for a total of 48,091 rules made by fifteen cabinet departments, eight executive agencies, and twenty-four indepen-

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<sup>12</sup>We use as the pool of agencies all cabinet departments, executive agencies, and independent agencies that undertook at least one rule making action from 1983-2010 and hence appeared in the Unified Agenda of Federal Regulatory and Deregulatory Actions during this time period.

dent agencies from 1983-2010. Important components of the rulemaking process included in the database include the dates that Notice of Proposed Rulemaking were issued, when comment periods opened and closed, when final rules were issued, when proposed rules were withdrawn, and when interim rules were issued, as well as substantive information such as the abstract of each rule and the prioritization of each rule as “major” under the Congressional Review Act O’Connell (2008, 2011).

For our measure of committee ideology we use the Common Space score of the chair of the committee in each year. We normalize these committee ideology scores across chambers within each Congress since we are interested in a committee’s ideology relative to the other committees across both chambers that it could be competing with over oversight in the “arms race” pattern implied by our common agency hypothesis.

For our measure of agency ideology we use normalized scores developed by Clinton and Lewis (2008). Their measure is based on a survey of expert observers regarding their perceptions of agency ideology and is meant to measure the underlying ideology of the agency’s mission, not the ideology of the appointees in the agency at the time of the survey.

### 3 Analysis

We present analysis here for 1983-2010 defining an oversight hearing as one that mentions an agency and has at least one agency staff person testifying.<sup>13</sup> We break

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<sup>13</sup>Results are broadly consistent when we define oversight in the other ways that our dataset lends itself to, as described previously.

the analysis up between divided Congresses only and all Congresses. We look specifically at divided Congresses since this is a concrete way to operationalize, albeit imperfectly, the idea of competing committees whose ideal points are on opposite sides of the status quo policy.

Our dependent variable,  $hearings_{acy}$ , is the number of hearings per agency-committee pair per year. In other words, it is the number of hearings held by a particular committee to oversee a particular agency in a given year. We provide descriptive statistics for our dependent variable and all explanatory variables in A.1.

We have constructed three explanatory variables to test the agency activity, agency policy conflict, and common agency implications of our model. Our measure of agency activity,  $lagged.rules_{ay}$ , is our first explanatory variable. This is a lagged count of all rule making actions by each agency from the previous year. These rule making actions include advanced NPRMs, NPRMs, final rules, interim final rules, direct final rules, withdrawn rules, public hearings, and extensions to comment periods. We also separately construct a count of all rule making actions designated as “major” under the Congressional Review Act by each agency in each lagged year. Data is only available starting in 1994 for this “major” designation. We have lagged these rule making variables by one year based on the substantive motivation that oversight hearings are an ex post oversight tool in response to agency activity.

The second explanatory variable,  $ag.com.distance_{acy}$ , is a measure of the ideological distance between each committee-agency pair in each year. To construct the variable we take the absolute value of the difference between the normalized

agency ideology score and the normalized committee ideology score.

The third explanatory variable,  $com.com.pair.distance_{cy}$ , is a measure of the ideological distance between comparable committees in the House and Senate. We have created cross-chamber pairs of committees, as listed in Table 1. We paired committees based on areas of common policy concern. The ideological distance between the House and Senate committee in each pair is the absolute value of the difference between the two committees' normalized ideology scores.

Table 1: Committee-Committee Pairs

|      | <b>House Committee</b>            | <b>Senate Committee</b>                    |
|------|-----------------------------------|--|
| 1    | Agriculture                       | Agriculture, Nutrition, and Forestry       |
| 2    | Armed Services                    | Armed Services                             |
| 3    | Financial Services                | Banking, Housing, and Urban Affairs        |
| 4    | Budget                            | Budget                                     |
| 5    | Education and the Workforce       | Education                                  |
| 6    | Energy and Commerce               | Commerce, Science, and Transportation      |
| 7    | Science, Space, and Technology    | Commerce, Science, and Transportation      |
| 8    | Foreign Affairs                   | Foreign Relations                          |
| 9    | Oversight and Government Reform   | Homeland Security and Governmental Affairs |
| 10*  | Homeland Security                 | Homeland Security and Governmental Affairs |
| 11   | Administration                    | Rules and Administration                   |
| 12   | Rules                             | Rules and Administration                   |
| 13   | Judiciary                         | Judiciary                                  |
| 14   | Natural Resources                 | Energy and Natural Resources               |
| 15** | Merchant Marine and Fisheries     | Energy and Natural Resources               |
| 16   | Small Business                    | Small Business and Entrepreneurship        |
| 17   | Veterans' Affairs                 | Veterans' Affairs                          |
| 18   | Transportation and Infrastructure | Environment and Public Works               |
| 19   | Ways and Means                    | Finance                                    |
| 20   | Intelligence                      | Intelligence                               |

*Notes:* \* Starting in 2002 when the House Committee on Homeland Security was established. \*\* Ending in 1995 when the House Committee on Natural Resources took over the duties of the Committee on Merchant Marine and Fisheries.

The main specification that we use to test the agency activity, agency policy conflict, and common agency implications of our model is as follows. Subscript  $a$  denotes agency, subscript  $c$  denotes committee, and subscript  $y$  denotes year.

$\Gamma$  represents fixed effects, including year fixed effects, agency fixed effects, and committee fixed effects. We cluster all standard errors at the agency-committee pair level to account for serial correlation as well as the fact that we pair some Senate committees with more than one House committee.<sup>14</sup>

$$hearings_{acy} = \beta_0 + \beta_1 lagged.rules_{ay} + \beta_2 ag.com.distance_{acy} + \beta_3 com.com.pair.distance_{cy} + \Gamma + \epsilon_{acy} \quad (7)$$

Table 1 summarizes our regression results. For a given level of ideological conflict between a committee and an agency and between a committee and its cross-chamber paired committee, we find a strong positive relationship between oversight and agency rule making but one that is quite small in magnitude. During divided Congresses, we find that one additional rule per year by an agency increased oversight hearings by .002. This means that a one standard deviation increase in the number of rules per year (an increase of about 62 rules in a given year) issued by an agency increased hearings by about 6% of a standard deviation. The magnitude decreases slightly when we look at all Congresses. Even when we limit our analysis to major rules, the magnitude remains small. A one standard deviation increase in the number of major rules per year (an increase of about 7 major rules in a year) leads to about a 5% increase in oversight hearings.

For a given level of agency rule making and ideological conflict between a com-

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<sup>14</sup>Hearings held in a given year by Senate committee  $i$ , which is paired with both House committees  $j$  and  $k$ , overseeing agency  $a$ , show up as two observations. The only thing different between these observations is the *com.com.pair.distance*. One observation gives the distance between Senate committee  $i$  and House committee  $j$  and the other gives the distance between Senate committee  $i$  and House committee  $k$ . We cluster standard errors at the agency-committee pair level so as not underestimate the variance in the data resulting from these hearings.

mittee and its cross-chamber paired committee, we also find a positive relationship between oversight and the ideological distance between congressional committees and agencies but one that is also quite small in magnitude. During divided Congresses, we find that a one unit increase in the ideological distance between an agency and a committee increased oversight hearings by .09. This means that a one standard deviation increase in the agency-committee ideological distance increased hearings by about 3% of a standard deviation. This magnitude decreases when we look at all Congresses and when we limit the analysis to major rules.

Last, for a given level of agency rule making and ideological conflict between a committee and an agency, we find in all but one specification a positive relationship between oversight and the ideological distance between congressional committees across chambers that focus on similar policy areas. During divided Congresses, we find that a one unit increase in the ideological distance between a committee and its cross-chamber paired committee increased oversight hearings by about .186. This means that a one standard deviation increase in the committee-committee pair ideological distance increased hearings by about 5% of a standard deviation. This magnitude decreases when we look at all Congresses and when we limit the analysis to major rules.

We note that we did not find a difference in the relationship between oversight and agency-committee ideological distance between independent agencies as opposed to cabinet departments and executive agencies. We also did not find a difference in the relationship between oversight and agency-committee ideological distance based on the amount of rulemaking done by an agency.

That all of the results are more pronounced under divided Congresses is an

encouraging result, in terms of support for our model. It is in these cases that we suspect it is most likely that the agency’s policy would indeed fall between the two committee ideal points, which we assume in our model. Although more pronounced under divided Congresses, we also turn up support for cross-chamber “arms race”-style competition over oversight during unified Congresses. Even when cross-chamber paired committees are chaired by members of the same party, as their ideological distance from each other increases, both committees hold more oversight hearings for fixed levels of agency activity and agency-committee ideological conflict.

On the whole, the connection that we establish between congressional oversight and Congress’s agency problem after delegating to the bureaucracy is encouraging from the perspective of democratic accountability. Our results provide consistent support for all three implications of our model. The magnitudes are obviously not big but there is clear evidence supporting the agency activity, agency policy conflict, and common agency hypotheses. This support is broadly consistent across empirical specifications and within different samples. Regarding the magnitudes, without more evidence and information, it is difficult to say one way or the other whether increasing hearings a small amount has important effects in how our laws are implemented and in the extent to which agency policy-making is made more democratic. But it is certainly plausible that small increases in the number of hearings can result in big changes in policy.

But the picture is not entirely rosy. With evidence of the encouraging connection between oversight and Congress’s agency problem also comes evidence of a democratic problem created by delegation. Namely, instead of working to find the

right mix of legislative control and agency loss, committees may instead be engaged in an “arms race” with other committees, perhaps providing more oversight than would be ideal from the perspective of obtaining a democratically accountable arrangement of policy outcomes.



Table 2: Oversight, Agency Rulemaking, and Ideological Conflict

|   | DV: Hearings per committee-agency-year |                     |                     |                     |                     |                     |                   |
|---|--|---------------------|---------------------|---------------------|---------------------|---------------------|-------------------|
|   | Model 1                                | Model 2             | Model 3             | Model 4             | Model 5             | Model 6             | Model 7           |
| <b>PANEL A: Divided Congresses: 1984-1986</b>           |  |                     |                     |                     |                     |                     |                   |
| <u>All rulemaking</u>                                   |  |                     |                     |                     |                     |                     |                   |
| Rulemaking per year per agency (lagged)                 | 0.002***<br>(0.001)                    | 0.002***<br>(0.001) | 0.000<br>(0.000)    | 0.002***<br>(0.001) | 0.000<br>(0.000)    | 0.002***<br>(0.001) | 0.000<br>(0.000)  |
| Ideological distance per year per agency committee pair | 0.101**<br>(0.047)                     | 0.094**<br>(0.047)  | -0.003<br>(0.047)   | 0.114**<br>(0.046)  | -0.012<br>(0.047)   | 0.107**<br>(0.046)  | 0.002<br>(0.045)  |
| Ideological distance per year per com-com pair          | 0.189***<br>(0.068)                    | 0.186***<br>(0.068) | 0.188***<br>(0.067) | 0.105**<br>(0.047)  | 0.185***<br>(0.067) | 0.070<br>(0.044)    | 0.066<br>(0.043)  |
| N   | 4560                                   | 4560                | 4560                | 4560                | 4560                | 4560                | 4560              |
| R-Squared   | 0.010                                  | 0.012               | 0.094               | 0.060               | 0.096               | 0.062               | 0.146             |
| <b>PANEL B: All Congresses: 1984-2010</b>               |  |                     |                     |                     |                     |                     |                   |
| <u>All rulemaking</u>                                   |  |                     |                     |                     |                     |                     |                   |
| Rulemaking per year per agency (lagged)                 | 0.001***<br>(0.000)                    | 0.001***<br>(0.000) | 0.000**<br>(0.000)  | 0.001***<br>(0.000) | 0.000<br>(0.000)    | 0.001***<br>(0.000) | 0.000<br>(0.000)  |
| Ideological distance per year per agency committee pair | 0.040***<br>(0.014)                    | 0.027*<br>(0.014)   | 0.012<br>(0.015)    | 0.033**<br>(0.014)  | -0.004<br>(0.016)   | 0.019<br>(0.014)    | -0.013<br>(0.016) |
| Ideological distance per year per com-com pair          | 0.048***<br>(0.017)                    | 0.072***<br>(0.018) | 0.047***<br>(0.016) | -0.017*<br>(0.009)  | 0.072***<br>(0.017) | 0.000<br>(0.009)    | 0.000<br>(0.009)  |
| N   | 40941                                  | 40941               | 40941               | 40941               | 40941               | 40941               | 40941             |
| R-Squared   | 0.009                                  | 0.019               | 0.058               | 0.042               | 0.068               | 0.050               | 0.100             |
| <u>Major rulemaking</u>                                 |  |                     |                     |                     |                     |                     |                   |
| Major rulemaking per year per agency (lagged)           | 0.012***<br>(0.004)                    | 0.010***<br>(0.004) | 0.011**<br>(0.005)  | 0.012***<br>(0.004) | 0.009*<br>(0.005)   | 0.010***<br>(0.004) | 0.009*<br>(0.005) |
| Ideological distance per year per agency committee pair | 0.041***<br>(0.010)                    | 0.033***<br>(0.010) | 0.021**<br>(0.010)  | 0.021**<br>(0.010)  | 0.013<br>(0.012)    | 0.009<br>(0.010)    | -0.012<br>(0.013) |
| Ideological distance per year per com-com pair          | 0.057***<br>(0.020)                    | 0.067***<br>(0.022) | 0.057***<br>(0.020) | -0.002<br>(0.012)   | 0.067***<br>(0.021) | 0.008<br>(0.014)    | 0.008<br>(0.014)  |
| N   | 19336                                  | 19336               | 19336               | 19336               | 19336               | 19336               | 19336             |
| R-Squared   | 0.005                                  | 0.009               | 0.038               | 0.035               | 0.042               | 0.038               | 0.071             |
| FEs   | None                                   | Year                | Agency              | Com                 | Yr & Ag             | Yr & Com            | Yr, Ag, Com       |

Notes: \*\*\*  $p < 0.001$ , \*\*  $p < 0.01$ , \*  $p < 0.05$ ,  $p < 0.1$  Notes: Standard errors are clustered at the agency-committee pair level. Major rulemaking is only for 1994-2010 due to data availability.

## 4 Conclusion

Although much has been learned about legislative oversight, its use in resolving Congress's agency problems with the bureaucracy has not been tested empirically. Empirical research on oversight has tended to focus on incentives and constraints within Congress itself, or from the large scale policy dynamics in play well beyond the bureaucracy.

As a result of scholars' focus on the congressional side of oversight, we have had little empirical understanding of the value of oversight hearings for reconciling administrative policy-making with democratic values and aspirations. In this paper we have explicitly connected on-the-record legislative oversight, the variety that occurs in oversight hearings, to a principal-agent approach to legislative-bureaucratic interaction. This theoretical perspective gives rise to conceptually distinct expectations about oversight behavior, as reflected in the agency policy conflict, agency activity, and common agency hypotheses. The overarching perspective behind these hypotheses is that oversight hearings are a useful tool to mitigate agency loss Congress faces in the bureaucracy, and so its use should be affected by the likely magnitude of that agency loss under different political conditions.

We are unlikely to see our empirical results if oversight activity is not systematically related to the intensity of the agency problem Congress faces, as a whole and in its possibly-conflicting subsets, with respect to the bureaucracy. Of course as in any non-experimental setting, these results should be taken with a grain of salt. We cannot rule out all omitted variables or reject that there may be other models that better explain the data, though we are unaware of any at the present time.

On the whole, our results should encourage scholars concerned with democratic accountability. Our findings suggest that formal oversight activity by Congress is at least in part about finding the optimal mix of bureaucratic control and agency loss. But our results also indicate that inter-committee competition might result in an “arms race” leading to a more contentious political climate around program implementation than is necessary to obtain a particular arrangement of policy outcomes.

## A Tables and Figures

Table A.1: Descriptive statistics, all variables

|   | N     | Mean  | SD    | Median |
|---|-------|-------|-------|--------|
| <b>Hearings that have an agency staff member testifying</b> |       |       |       |        |
| <b>Divided Congresses: 1984-1986</b>                        |       |       |       |        |
| <u>All rulemaking</u>                                       |       |       |       |        |
| Hearings per year per agency-committee pair                 | 4560  | 0.55  | 2.19  | 0      |
| Rulemaking per year per agency                              | 4560  | 52.52 | 62.09 | 31     |
| Ideological distance per year per agency-committee pair     | 4560  | 1.08  | 0.78  | 0.95   |
| Ideological distance per per committee-committee pair       | 4560  | 1.67  | 0.63  | 1.81   |
| <b>All Congresses: 1984-2010</b>                            |       |       |       |        |
| <u>All rulemaking</u>                                       |       |       |       |        |
| Hearings per year per agency-committee pair                 | 40941 | 0.42  | 1.98  | 0      |
| Rulemaking per year per agency                              | 40941 | 55.92 | 70.57 | 28     |
| Ideological distance per year per agency-committee pair     | 40941 | 1.04  | 0.81  | 0.86   |
| Ideological distance per per committee-committee pair       | 40941 | 1.27  | 0.91  | 1.1    |
| <u>Only major rulemaking*</u>                               |       |       |       |        |
| Hearings per year per agency-committee pair                 | 19336 | 0.22  | 1.51  | 0      |
| Rulemaking per year per agency                              | 19336 | 3.4   | 6.95  | 0      |
| Ideological distance per year per agency-committee pair     | 19336 | 1     | 0.79  | 0.81   |
| Ideological distance per per committee-committee pair       | 19336 | 1.33  | 0.98  | 1.2    |

Notes: \*Major rulemaking only for years 1994-2010 due to data limitations.

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