

# FACTFILE: GCE GOVERNMENT & POLITICS

## CONGRESSIONAL OVERSIGHT



### Congressional oversight

Scrutiny by Congress of the actions of the Executive branch is often referred to as 'oversight'. The Constitution gives the House of Representatives and the Senate specific responsibilities in their scrutiny of the Executive. In this Factfile four of the oversight functions performed by Congress will be explored:

**Impeachment**

**Advice and consent**

**Executive appointments**

**Investigation by committee**

Due to the [Separation of Powers](#), Congress does not operate in terms of government and opposition in the British sense. Accordingly, the scrutiny of the Executive is more independent and highly objective. Congress also expects its views to be listened to by the Executive, as befits a political system where the political institutions are more equitable and balanced. Additionally, many aspects of 'oversight' are intended to be non-partisan.



### Impeachment

Impeachment is the process by which Congress can remove any federal official for misconduct. It is a long process that has been used sparingly (only seven judges have ever been successfully impeached). Impeachment can only be initiated if the official is found guilty of 'high crimes and misdemeanours'. It follows from this that it cannot be used as a political tool. The misconduct aspect is therefore extremely important. Congress cannot impeach a President because they disagree with his policies.

The process is as follows: The House of Representatives pass a vote to begin impeachment hearings against a President; a simple majority vote in favour of initiating impeachment is required. The Senate must then try the President and vote on whether to impeach; a conviction requires a two-thirds majority vote.

Presidential impeachment has only been initiated on three occasions.

#### [Andrew Johnson 1868](#)

This case involved unresolved issues from the Civil War. The President found himself in conflict with the Secretary of War, Edwin Stanton, regarding how the southern states, who had seceded in 1861, sparking the Civil War, should be treated. Johnson removed Stanton from his post despite the existence of the Tenure of Office Act (1867) which stated that a President could not dismiss a member of the Cabinet without Congress's approval. Thirty-five members of the Senate found the President guilty whilst 19 found him not guilty. The guilty vote fell short of the two-thirds required to impeach the President by just one vote. The push to remove him was seen as politically motivated.

**Richard Nixon 1974**

Proceedings were initiated by the House of Representatives after what became known as the Watergate scandal. The House of Representatives in May 1974 brought three articles of impeachment against the President which included obstruction of justice, abuse of power and contempt of Congress. The charges related to the alleged cover-up of the break-in which took place at the Democratic National Committee's offices in the Watergate complex in June 1972. It was discovered that funds amounting to \$25,000 had been deposited in one of the burglars' accounts from the finances of the Campaign to Re-elect the President. Nixon was implicated in the cover-up of this crime and tried to prevent investigators from obtaining tapes of conversations which had taken place in the Oval Office. [Nixon resigned](#) before the House could vote on the articles of impeachment which would have led to a trial by the Senate and which would inevitably have gone against him.

**Bill Clinton 1998**

The House of Representatives voted to send Clinton to trial on two counts, that of perjury and the obstruction of justice. He survived both votes in the Senate and was [cleared](#).

The failure of the Clinton case was very important. The charges were related to a false affidavit that he signed in order to cover up his marital infidelity which had been revealed in a court case by Linda Tripp. Whilst this was illegal, it paled in insignificance to the crimes of Richard Nixon and it appeared that a hostile Congress was simply out to get Clinton, with many questioning the relevance of the questions asked about his personal extra-marital relations with the former intern Monica Lewinsky. The Starr investigations were also funded by those close to the Nixon circle and the process carried more than a whiff of political revenge.

If the case had succeeded it is possible that the impeachment mechanism would have been transformed into a political weapon, with political opponents trying to find any means, no matter how tenuous, to impeach and remove the President. For instance, there are over six million internet pages dedicated to discussing possible ways to impeach Obama.



## Advice and consent

### Advice and consent

This is a role specifically reserved for the Senate. The Constitution requires it to provide “advice and consent” to foreign treaties and presidential appointments.

### Treaties

All the President’s appointments are subject to approval from the Senate. This requires a two-thirds majority vote and may be one of the reasons why Presidents, in making agreements with

foreign countries, often resort to making Executive Agreements rather than treaties. It is often the case that the US system of government and politics is characterised by divided government, which makes it difficult for the President to achieve the required two-thirds majority vote in favour of a treaty. Unlike treaties, Executive Agreements are not binding on future Presidents.

Famously the [Senate](#) refused to ratify the Treaty of Versailles that Woodrow Wilson had negotiated in 1919.



## Executive appointments

The appropriate Senate Committee will hold hearings to decide the suitability of the nominated candidate. For example, the Senate Judiciary Committee will consider Presidential nominations to the Supreme Court. The Committee, on the basis of its questioning of the nominated candidate, will make a recommendation to the full Senate who will then hold a full vote. A simple majority is required for the nomination to succeed. The Committee’s recommendations will usually be the defining factor, with the confirmation process representing a mere formality with over a 90% success rate, however, there have been exceptions.

- In 1989 Bush Sr’s Defence Secretary nominee [John Tower was rejected](#).
- In 2005 Bush’s Supreme Court nominee, Harriet Miers, [withdrew](#) as a result of opposition to her nomination.
- In 2014 Obama’s nominee for a key role in the Department of Justice, Debo Adegbile, was turned down even [by Democrats](#).

All of these rejections were based on the alleged competence of the nominee to do the job, which is supposed to be the primary consideration in the appointments process.

Without doubt, the most controversial appointments process concerns Supreme Court Justices. Given that Supreme Court Justices are responsible for

clarifying the constitutional framework within which government may operate, they have an enormous impact on the political climate. Therefore the views of its nominees are scrutinised forensically, particularly on the issue of abortion.

Reagan’s selections for the court came under extreme pressure and the Senate Judiciary Committee fought a campaign to prevent the nominee Robert Bork from becoming a Supreme Court Justice in 1987. Senator Ted Kennedy thought he would roll back previous Supreme Court decisions and made a devastating speech claiming that “Robert Bork’s America is a land in which women would be forced into back-alley abortions, blacks would sit at segregated lunch counters, rogue police could break down citizens’ doors in midnight raids, children could not be taught about evolution.” Whilst Bork was rejected, it was becoming clear that the political views of the nominee were what was being scrutinised and not their competency.

The Clarence Thomas hearings (1991) represented a low point in the confirmation process, with many feeling that it brought the entire process into disrepute. Bush Sr.’s nominee held conservative views but it was his alleged sexual harassment of a former co-worker that put the hearings under the national spotlight. Staring defeat in the face, Thomas made a [stunning declaration](#) that the hearings were “a high-tech lynching for uppity blacks”. These uncomfortable references to the past disarmed his opponents and he survived the process.

The death of Antonin Scalia in February 2016 has opened up a position on the Supreme Court that remains unfilled. Such is the [political significance](#) of this opening that Republicans have sought to obstruct Obama from making this nomination, arguing that the next President should make the nomination. As Supreme Court justices have security of tenure it can be the case that some Presidents do not receive the opportunity to make a

nomination. The Democrat, Jimmy Carter, President from 1977 to 1981, was one President who did not receive the opportunity to make a nomination to the Supreme Court. The fear of the 11 Republican members of the Senate Judiciary Committee which is blocking Obama's nomination is that the [nomination](#) could tilt the balance of power on the Supreme Court to the left for a generation or more and lead to more liberal judgements.



## Investigation by committee

Committees in Congress are the organisational centres of power. This gives them a key role in providing oversight through their investigative role. Committees can hold inquiries, compile reports and make recommendations into any aspect of their given policy area. Committees are well resourced to do this, as they have a significant number of research staff to carry out this task. Moreover, they have the power to subpoena witnesses to appear before them and work within a strong freedom of information context. Committees are also able to publicise issues that might otherwise not be brought to the attention of the general public. Whilst the committees do not have the ability to legally compel the Executive, their power comes from their status within the system. The balanced nature of the American government means that the committees expect to be heeded. It would be foolish for a President to ignore Congressional oversight as he requires a good working relationship with the legislature to secure his policy agenda. Additionally, a committee that feels snubbed may initiate legislation to purposely curtail the scope for action by various Executive departments. Most of the investigative work is carried out by the Standing Committees. They examine the work of the particular departments and agencies related to their policy area. This will often involve hearings where committee secretaries are interviewed. In 2005 members of the Bush administration were interviewed 67 times.

The Senate Judiciary Committee persistently investigated the actions of Attorney General Alberto Gonzales and the possibility that sackings in the Justice Department in December 2006 were politically motivated. After weeks of pressure and seemingly contradictory testimony, [Gonzales resigned in August 2007](#).

The hardest hitting report in recent times came from the Senate Intelligence Committee in December,

2014. The report considered the [Enhanced Interrogation Techniques](#) (Torture) used by the CIA in its interrogation of al-Qaeda suspects. It led Diane Feinstein, Senator for California and Chairwoman of the Senate Intelligence Committee, to describe the practice as a "stain on US history". Importantly, it has led to major reforms in CIA practices.

Congress can also establish [Select or Special Committees](#) to look at specific issues. The real pressure to impeach Nixon came as a result of the investigation carried out by the Senate [Watergate](#) Committee, and it was a number of Congressional committees investigating the Iran-Contra Affair which uncovered irregularities in the Reagan administration. Note that these criticisms were reactive in uncovering malpractice – it is much more difficult for committees to be preventative.

In February 2006, the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina found systematic failures at both the state and federal level and criticised the Federal Emergency Management Agency (FEMA).

The Commission into 9/11 was not a Congressional Committee but it was established as a result of Congressional legislation. Its findings, published in 2004, led to a greater degree of co-ordination among the intelligence services.

In November 2014 the House Intelligence Committee (a Standing Committee), after a two-year investigation, exonerated President Obama over his response to the attacks on the US embassy in Benghazi. However, the [House Select Committee Investigation on Benghazi](#) is still ongoing and has criticised the government for the poor security at the compound and blamed poor intelligence for failing to prevent the attacks. The Select Committee's investigation into this attack by a Republican controlled committee is one of the

longest investigations in Congressional history, and some political commentators have accused the committee of pursuing a political aim, especially in their questioning of Hilary Clinton who was the United States' Secretary of State at the time of the Benghazi attack. Clinton was questioned for [11](#)

[hours](#) when she appeared before the committee in October 2015. The House has committed to reporting by the summer of 2016.



## Conclusion

Congressional oversight takes a number of forms. Whilst it can be sporadic, it is an important element of American political culture and the ethos of checking and limiting the power of the Executive branch.

