

Testimony of Daniel Schuman, Policy Director, Demand Progress, Before the House Appropriations Subcommittee on the Legislative Branch for Fiscal Year 2022

Chairman Ryan, Ranking Member Herrera Beutler, and Members of the Committee, thank you for the opportunity to submit testimony. My name is Daniel Schuman and I serve as policy director at Demand Progress, a non-governmental organization focused on strengthening our democracy. We conduct research and engage in advocacy concerning strengthening Congress's ability to legislate and conduct oversight. We appreciate the raft of significant reforms undertaken by the Committee last year and in prior years. Today we wish to raise the issue of unionization for Congressional staff and its oversight by the Office of Congressional Workplace Rights.

Congressional staff work hard under demanding circumstances. This has always been true, but the last year has been particularly traumatic. Staff survived the insurrection, are slogging through the COVID pandemic, and are shouldering dramatically increasing workloads and heartbreaking requests for assistance. These recent and ongoing experiences continue to take a mental and physical toll on staff. Many have reached — and some have passed — the breaking point.

Business Insider reports “Current staff and outside experts fear that the exhaustion and trauma are pushing qualified people out the door, exacerbating the long-running problem of brain drain on Capitol Hill while denying lawmakers talented staff as they try to tackle some of the most pressing issues to face the country in generations.”¹ Making matters worse, in the midst of the pandemic, some staff were ridiculed by their superiors for wanting to wear masks at the office or to work from a remote location,² shattering any illusions that their personal safety would be placed above politics.

This is an acceleration of already troubling trends. House Majority Leader Steny Hoyer recently said “Each year we lose talented and experienced staff with deep institutional knowledge to the private sector because we do not offer competitive compensation and benefits. At the same time, we are failing to recruit and retain the more diverse workforce that we have said we want to attract.”³ House Administration Committee Ranking Member Rodney Davis sounded a similar note: “You can’t always say ‘let’s put the Congress first,’ because you’re gonna have to put your families first. That’s a decision I don’t want to see staffers have to continue to make.”⁴

¹ *Capitol Hill staffers are burned out and heading for the exits after a hellish year bookmarked by a pandemic and an insurrection*, Kayla Epstein, *Business Insider* (April 2021) <https://web.archive.org/web/20210420080226/https://www.businessinsider.com/congress-capitol-hill-staff-burnout-remote-work-january-6-insurrection-2021-4?r=US&IR=T>

² *GOP Staffers Detail Ridicule for Wearing Masks at Capitol*, Adam Raymond, *the Intelligencer* (July 2020), <https://nymag.com/intelligencer/2020/07/gop-staffers-detail-ridicule-for-wearing-masks-at-capitol.html>

³ *Congress Eager to Increase Staff Pay But Fear Voter Backlash*, Emily Wilkins, *BGOV* (April 2021) <https://www.bgov.com/core/news/#!/articles/QS7T2FDWRGG9>

⁴ *Id.*

Congress has begun to acknowledge the difficult circumstances for staff. The House Select Committee on the Modernization of Congress made numerous recommendations on improving the quality of life for Congressional staff.⁵ They include delinking staff pay from member pay, addressing unequal treatment for student loan repayment and health care benefits, creating a voluntary pay band system, increasing the MRA to allow for increased salaries, improving human resources, and regularly surveying staff on ways to improve pay, benefits, and quality of life. These recommendations, and measures undertaken by the House Rules, Administration, and Appropriations Committees to implement them and other reforms, are undoubtedly welcome. But the need for these reforms also indicates the current state of affairs. The feedback mechanism for reform is too slow and the signal received by Congress about staff distress is too weak.

One traditional way that employees work with employers to address their needs is through unions. As President Biden recently declared: “We must always protect the right of workers to unite and bargain for their own mutual aid or protection.”⁶ This is an avenue open to Congress, even if the history of the prior effort to allow for unionization has largely been forgotten.

In 1995, Congress enacted the Congressional Accountability Act, which was a key plank in the *Contract with America*. The CAA applied eleven federal laws addressing federal and private sector employers to Congress, *including the right to unionize*. It was the culmination of a 5-year bipartisan effort to “make Congress subject to the laws it passes,” in the words of Sen. Grassley, a prime mover in the effort.⁷

“The need for the legislation was clear. For example, in 1992, Congressman John Boehner (R-Ohio) asked the Occupational Safety and Health Administration (“OSHA”) to inspect his office for violations.... OSHA found violations that could have resulted in fines to any other employer of \$1,500.... In 1993, a *Washington Post* survey of Congressional staff revealed that one-third of the women questioned said they had been sexually harassed.... Further, the Congressional Management Foundation reported that women working as chiefs of staff on Capitol Hill made less money than similarly qualified men.”⁸

Many arguments were made against applying these laws to Congress. But Sen. Grassley’s arguments won the day. He was joined by Senators Lieberman (D-CT) and Nickels (R-OK), as well as Reps. Shays (R-CT), Goodling (R-PA), and Thomas (R-CA).

⁵ *The Select Committee on the Modernization of Congress - Final Report* (H. Rept. 116-562) <https://www.congress.gov/congressional-report/116th-congress/house-report/562/1>

⁶ *A Proclamation on Workers Memorial Day, 2021*, Pres. Biden (April 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/04/27/a-proclamation-on-workers-memorial-day-2021/>

⁷ *Practicing What We Preach: A Legislative History of Congressional Accountability*, Sen. Charles Grassley and Jennifer Shaw Schmidt, 35 Harv. J. on Legis. 33 (1998)

⁸ See *Practicing What We Preach*.

The Congressional Accountability Act allows staff to “form, join, or assist a labor organization for the purpose of collective bargaining without fear of penalty or reprisal.”⁹ But the CAA created a two-track system for unionization.

The first track allowed certain Legislative branch agencies and support staff to unionize, such as employees of the Capitol Police, the Library of Congress, the Government Publishing Office, and others. The second track would allow for personal and committee staff to unionize, as well as some support office staff, but only after the Office of Compliance engages in a notice-and-comment rulemaking and the proposed regulations are adopted by the chamber to which they would pertain.

The Office of Compliance Board issued regulations that would apply to second-track staff in the House and in the Senate in 1996.¹⁰ But, though it would only require the passage of a simple resolution, neither the House nor the Senate put the regulations into effect.

This is where matters stand a quarter-century later. The regulations are in place and appear ready to be activated. But, because so much time has elapsed since the CAA issued its regulations and matters may have changed, we recommend the House obtain answers to the following questions to determine whether and how to proceed on unionization:

- Can the House or Senate still pass a simple resolution pursuant to the CAA to allow for that chamber’s personal, committee, and support staff to unionize?
- Are the regulations a good fit for 2021 and beyond? If not, how should they be updated?
- Is the OCWR ready and able to support newly created congressional unions?
- How would this work in practice?

The time is right for Congress to examine the feasibility of Congress-wide unionization. We recommend this Committee put in motion an analysis of expanding Congressional unionization to better understand the options. Specifically, we recommend the committee request:

Within 1 year of enactment, the Office of Congressional Workplace Rights should provide a report to the Appropriations Committees, the Senate Rules Committee, and the Committee on House Administration that evaluates the fitness and implications of implementing the regulation concerning unionization of personal, committee, leadership, and support staff. The Committee on House Administration is requested to publish that report on its website no later than two weeks after receipt. The report also should evaluate the feasibility, requirements,

⁹ *Collective Bargaining and Unionization*, Office of Congressional Workplace Rights <https://www.ocwr.gov/rights-protections/other-workplace-protections/collective-bargaining-and-unionization>

¹⁰ *A Brief Recent History of Unionization in Congress*, Daniel Schuman, First Branch Forecast (Sept. 2020) <https://firstbranchforecast.com/2020/09/29/a-brief-recent-history-of-unionization-in-congress/>

and costs to enable personal, committee, leadership, and support office staff to unionize, and make any additional recommendations it sees fit.

Congressional staff are essential to the success of Congress. But the continuing challenges have reached a crisis point. Congress should consider providing its staff the ability to collectively advocate for measures that improve the operations of the Congress and the lives of those who serve in it.

Thank you for the opportunity to submit this testimony.