

## **Testimony of Daniel Schuman, Policy Director, Demand Progress, Before the House Appropriations Subcommittee on the Legislative Branch for Fiscal Year 2023**

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. Specifically, we conduct research and engage in advocacy concerning strengthening Congress's ability to legislate and conduct oversight. Thank you for the significant reforms undertaken by the Committee over the last few years. We urge Congress to put into effect the right to unionize for shared Congressional staff.

We would be remiss if we failed to note and congratulate the House of Representatives on the recent passage of H.Res 1096, which approved regulations issued by the Office of Congressional Workplace Rights (OCWR) to extend certain labor protections under the Congressional Accountability Act (CAA) to political and non-political House staff, notably the right to join a labor union.<sup>1</sup> Congressional staff work hard under demanding circumstances, yet all too often Congress has deprioritized those essential to the performance of its duties.<sup>2</sup> The CAA provides employees a greater ability to advocate for better working conditions, which ultimately benefits the American people by ensuring that Congress has capable, well-trained, experienced staff.

The Congressional Accountability Act, the first law enacted by the 104th Congress, 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.<sup>3</sup> The CAA applied eleven federal laws addressing federal and private sector employers to Congress, including the right to unionize.

"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."<sup>4</sup>

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<sup>1</sup> H.Res 1096 (117th Congress), <https://www.congress.gov/bill/117th-congress/house-resolution/1096>.

<sup>2</sup> See, e.g., the statement by House Administration Committee Ranking Member Rodney Davis: "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." *Congress Eager to Increase Staff Pay But Fear Voter Backlash*, Emily Wilkins, BGOV (April 2021) \$ <https://www.bgov.com/core/news/#!/articles/QS7T2FDWRGG9>

<sup>3</sup> *Practicing What We Preach: A Legislative History of Congressional Accountability*, Sen. Charles Grassley and Jennifer Shaw Schmidt, 35 Harv. J. on Legis. 33 (1998). See P.L. 104-1.

<sup>4</sup> See *Practicing What We Preach*.

Many arguments were advanced on whether to apply these laws to Congress. But Sen. Grassley's arguments won the day. He was joined by Senators Lieberman (D-CT) and Nickles (R-OK), as well as Reps. Shays (R-CT), Goodling (R-PA), and Thomas (R-CA).

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.”<sup>5</sup> It created a two-track system for unionization.

The first track allowed some Legislative branch agencies and congressional support staff to unionize who by-and-large were not political staff. The regulations were self-executing and went into effect upon the promulgation of OCWR regulations in 1996.<sup>6</sup> The second track allowed for select political and non-political staff to unionize, but *only* after the OCWR engaged in a notice-and-comment rulemaking and the proposed regulations were adopted by the chamber to which they would pertain, or by both chambers with respect to shared staff.<sup>7</sup>

The House, in 2022, passed a resolution applying the CAA to its staff, but what about staff shared between the chambers? Some staff were covered under the original regulations issued in 1996, including those employed by the Architect of the Capitol, the U.S. Capitol Police, and the Capitol Guide Service. (Staff at other support agencies, such as the Library of Congress, the Government Publishing Office, and the Government Accountability Office are extended the right to unionize under other laws.) However, staff employed by the Congressional Budget Office, the Office of Congressional Workplace Rights, and the currently-defunded Office of Technology Assessment were included in the second track, thus a joint resolution is required to approve the regulations issued by the OCWR that pertain to them.

Approving the OCWR's regulations to allow CBO and OCWR staff the opportunity to unionize under the Congressional Accountability Act should enjoy even broader support than that enjoyed by extending that right to House staff. The major critique of allowing political staff in congressional offices to unionize — that it somehow interferes with the relationship between the member and the constituents<sup>8</sup> — does not apply with respect to CBO and OCWR. Those staff simply do not play that kind of political role.

There is precedent for Legislative branch agency staff to unionize. Analysts at the GAO are unionized under IFPTE Local 1921.<sup>9</sup> Analysts at the Congressional Research

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<sup>5</sup> *Collective Bargaining and Unionization*, Office of Congressional Workplace Rights <https://www.ocwr.gov/rights-protections/other-workplace-protections/collective-bargaining-and-unionization>

<sup>6</sup> At the time, the OCWR was called the Office of Compliance. For clarity, I use OCWR throughout.

<sup>7</sup> *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/>

<sup>8</sup> See generally statements of the Hon. Rodney Davis and testimony of Mark Strand at the Committee on House Administration hearing “Oversight of Section 220 of the Congressional Accountability Act” (March 2020), <https://cha.house.gov/committee-activity/hearings/oversight-section-220-congressional-accountability-act-implementing>

<sup>9</sup> GAO Employees Organization, IFPTE Local 1921, <https://www.gaoemployees.org/>

Service are unionized under IFPTE Local 75.<sup>10</sup> In fact, I was a member of the Congressional Research Employees Association union when I served as a legislative attorney in the American Law Division at CRS. There are more than two dozen unions within the Legislative branch that cover all types of employees.

Members of the OCWR Board were “unanimous in recommending that the regulations adopted by the 1996 board be approved by Congress,” according to OCWR General Counsel John Uelman in his testimony before the House Administration Committee.<sup>11</sup> Why? “The statutory procedures under Section 220 were not changed by the [The Congressional Accountability Act of 1995 Reform Act], and the regulations are not obsolete because of change in the House or the Senate since 1996.” Furthermore, his view is that “the Congressional Accountability Act clearly provides that these rights exist for employees, and it’s just a technicality that they haven’t been implemented for congressional staff.” The same is true for employees of the CBO and OCWR.

Just like their political counterparts, non-political Legislative branch staff have labored under difficult working conditions and through a series of budget crunches. They also survived the insurrection, are slogging through the COVID pandemic, and have shouldered dramatically increasing workloads. These recent and cumulative experiences continue to take a mental and physical toll on staff. They, too, should be afforded the right to organize and collectively advocate for better working conditions.

At the budget hearing before the House Legislative Branch Appropriations Subcommittee earlier this year, OCWR Acting Executive Director Teresa James said that the OCWR needs an additional \$500,000 and 2 FTE above its budget request to support the additional workload that would arise as a consequence of permitting House staff to unionize.<sup>12</sup> We urge you to provide these funds and a small amount more to support the fewer than 300 FTEs at CBO and OCWR.

We also urge you to approve regulations issued by the OCWR to extend labor protections under the Congressional Accountability Act to shared staff in the bill text of the Legislative Branch Appropriations Bill for FY 2023. Passage of approval language by both chambers would allow CBO and OCWR staff the right to unionize, which would provide them a right available throughout the Legislative branch and across the country.

Thank you for the opportunity to submit this testimony.

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<sup>10</sup> Congressional Research Employees Association, IFPTE Local 75, <https://creaunion.org/>

<sup>11</sup> “Oversight of Section 220 of the Congressional Accountability Act,” Committee on House Administration (March 2020), <https://cha.house.gov/committee-activity/hearings/oversight-section-220-congressional-accountability-act-im>

<sup>12</sup> Fiscal Year 2023 Budget Request for the Office of Congressional Workplace Rights, House Legislative Branch Appropriations Subcommittee (April 5, 2022), <https://appropriations.house.gov/events/hearings/fiscal-year-2023-budget-request-for-the-office-of-congressional-workplace-rights>