

**Statement of Douglas N. Letter, General Counsel
Office of General Counsel
U.S. House of Representatives
Before the Legislative Branch Subcommittee
of the Committee on Appropriations
Regarding Fiscal Year 2021 Budget Request of the Office of General Counsel**

Chairman Ryan, Ranking Member Herrera Beutler, and Members of the Subcommittee. Thank you for the opportunity to present and explain the fiscal year 2021 (“FY’21”) budget request of the Office of General Counsel (“OGC”). For FY’21, OGC requests \$1,815,000 – \$1,617,000 for personnel costs and \$198,000 for non-personnel costs. OGC’s FY’21 budget request represents an increase of \$64,000 (3.66%) over OGC’s FY’20 enacted funds of \$1,751,000. A justification of the requested increase over the amount of FY’20 enacted funds appears below.

Functions of the Office

Pursuant to Rule II.8(a) of the Rules of the House of Representatives (116th Cong.), OGC is an office in the House that provides legal advice and representation to the House, and as appropriate to its Members, Committees, Officers, and employees, without regard to political affiliation, on matters related to their official duties. OGC functions pursuant to the direction of the Speaker, who, with respect to litigation matters involving the House, consults with the Bipartisan Legal Advisory Group (consisting of the Speaker, the Majority and Minority Leaders, and the Majority and Minority Whips). *See* House Rule II.8(a), (b). While it is difficult to furnish an exhaustive list of the types of advice and representation that OGC provides, OGC addresses the following matters with some frequency:

- **Judicial Proceedings:** OGC represents the House in litigation, and also represents Members, Committees, Officers, and employees, both as parties and as non-party witnesses, in litigation arising from or relating to the performance of their official duties, at the pre-trial, trial, and appellate levels. Among other responsibilities, OGC defends civil suits; moves to quash or limit subpoenas; represents the House and its Committees in suits for affirmative relief, such as enforcement of House subpoenas; represents the House in defending Acts of Congress that the Department of Justice has declined to defend; files amicus curiae briefs on behalf of the House or one or more of its constituent entities in cases that raise issues of significant institutional interest to the House and its Members; and applies to district courts, on behalf of Committees and Subcommittees, for immunity orders for witnesses.
- **Committee Subpoenas:** OGC provides advice to House Committees and Subcommittees in connection with the preparation, service, and enforcement of Committee and Subcommittee subpoenas, including advice and assistance in dealing with recalcitrant witnesses.

- **Requests for Information:** OGC provides advice and representation to House Members, Committees, Officers, and employees in connection with responses to informal and formal requests for information (e.g., grand jury subpoenas, trial and deposition subpoenas, FOIA requests) from governmental agencies (including the Department of Justice), as well as from private parties.
- **Privileges:** OGC provides advice regarding the applicability of various privileges including, most particularly, the Speech or Debate Clause privilege (U.S. Const. art. I, § 6, cl. 1), but also executive, Fifth Amendment, attorney-client, attorney work product, and other privileges.
- **Tort Claims:** OGC reviews and evaluates tort claims for possible administrative resolution by the Committee on House Administration and, where appropriate, refers such claims to the Department of Justice for defense under the Federal Tort Claims Act, and then assists the Department with such defense.
- **Tax Matters:** OGC advises House offices and vendors regarding applicable tax exemptions for official purchases.
- **Constituent Casework:** OGC provides advice to Members and their staffs about the handling of constituent casework, including responding to questions that concern the confidentiality and discoverability of constituent communications and information.
- **Internal Policies:** In consultation with the Speaker's office and other leadership offices, OGC assists in drafting, amending, and evaluating internal House policies, rules, and regulations.
- **Formal Legal Opinions:** From time to time, OGC issues formal legal opinions on matters of interest to the House, Members, Committees, and/or Officers, including whether proposed legislation raises constitutional questions.
- **Other Matters:** OGC provides a great deal of day-to-day advice on a wide variety of other legal matters including, but not limited to, immigration, intellectual property, debt collection, jury duty, landlord/tenant disputes, and miscellaneous constitutional and separation of powers issues. OGC also provides training for staff members regarding legal matters of relevance to their official functions.

The general demand for OGC's services has been substantial in recent years, as has the number of complex and high-profile legal matters the office has been asked to handle.

Justification for the Increase

At full staffing levels, OGC is composed of the General Counsel, Principal Deputy General Counsel, and seven senior attorneys with extensive legal experience, together with three law clerks, and an office administrator.

The requested \$64,000 increase in the budget for FY'21 relative to enacted funds for FY'20 is attributable in part to an \$18,000 increase in non-personnel expenditures. The increase reflects additional costs for replacing computers, a server, and other technological needs.

The FY 2021 budget request also includes funds for meritorious increases required to maintain salary levels sufficient to retain highly qualified attorneys and staff who handle the bulk of OGC's workload.

Based on the proposed funding level, OGC expects to be able to continue providing the same level of effective service it currently provides. In past years, expenditures for outside counsel have often necessitated the reprogramming of funds to increase OGC's budget.

As noted in our FY 2020 budget request, there exists a high probability that OGC will continue to be required to undertake significant litigation in the upcoming fiscal year. Such litigation may include cases in which the House authorizes OGC to initiate litigation, intervene or file amicus briefs in pending cases, or seek judicial enforcement of subpoenas issued by various House Committees.

OGC proposes to handle this litigation in several possible ways. First, to the extent practicable, matters will be litigated by OGC attorneys and law clerks. In some circumstances, cases might be handled by OGC attorneys working with private attorneys from law firms or public interest litigation groups. OGC reasonably expects that, where necessary, substantial legal services will continue to be provided to the House by private attorneys on a pro bono basis, meaning that the House will not be billed for these services. However, some matters may require OGC to enter into contracts for paid legal services with private attorneys. In addition, it is possible that OGC will find it necessary to hire at least one more full-time attorney to deal with the expected increased work load.

If it transpires that additional funds are needed for hiring another attorney or paying private counsel, OGC will request such funds as may be necessary at the appropriate time.

I would be happy to respond to any questions the Subcommittee might have. Thank you for your consideration.



Douglas N. Letter, General Counsel

Mr. Letter joined the Office as General Counsel in January 2019. In February 2018, after a 40-year career, Mr. Letter retired from the U.S. Department of Justice, where he served as Director of the Civil Division Appellate Staff. During his time at the Department of Justice, he also served as Associate Counsel to President Bill Clinton, as Deputy Associate Attorney General, and as Senior Counselor to Attorney General Eric Holder. Immediately prior to joining the Office of General Counsel, Mr. Letter was a visiting professor and Senior Litigator at the Institute for Constitutional Advocacy and Protection at the Georgetown University Law Center. Mr. Letter has presented over 200 oral arguments, including before the U.S. Supreme Court and various federal appellate and district courts. He received his law degree from the University of California, Berkeley Law School in 1978, and his Bachelor of Arts degree in American history from Columbia University in 1975.