



Bipartisan Policy Center

Written Testimony of Sens. Heidi Heitkamp and Mel Martinez Co-Chairs, Bipartisan Policy Center Working Group on Congress, Courts, and Administrative Law

Before the House Appropriations Subcommittee on the Legislative Branch:
Member Day and Public Witness Day

April 9, 2025

Chairman Valadao, Ranking Member Espaillat, and members of the House

Appropriations Legislative Branch Subcommittee, thank you for the opportunity to submit testimony. We had the privilege of serving in the U.S. Senate: Florida, 2005-09 (Martinez), and North Dakota, 2013-2019 (Heitkamp). We both witnessed how Congress can work at its best and how it can devolve into dysfunction. Insufficient resources for the legislative branch underpin many cases in which Congress has fallen short. Drawing on our public service experience, we recently co-chaired the Working Group on Congress, Courts, and Administrative Law convened by the Bipartisan Policy Center.¹ We encourage you to consider providing sufficient funding for congressional committees, the House Office of Legislative Counsel, and legislative branch support agencies.

Working Group on Congress, Courts, and Administrative Law

BPC established this working group in September 2024 in response to the Supreme Court decision in *Loper Bright Enterprises v. Raimondo*, which overturned what was known as “*Chevron* deference.” Under this 40-year judicial doctrine, federal courts had significant leeway in deferring to regulatory agencies’ interpretations of statutes. In *Loper Bright*, the court ruled that statutes have a single best meaning rather than multiple interpretations. Regulatory

¹ <https://bipartisanpolicy.org/congress-courts-administrative-law-working-group/>

agencies can no longer rely on implied delegations expressed in vague, ambiguous language as a basis for interpretation and implementation.

That decision came only two years after a series of court decisions striking down agency actions based on the major questions doctrine.² According to this, agencies cannot act on matters of great social, economic, or political significance without unambiguous delegations of authority from Congress.

To examine these decisions and their implications for Congress, BPC convened the working group of former elected officials, congressional staff, regulators, and other experts. The working group concluded that Congress needs to account for these rulings in three main areas: delegation to agencies, statutory interpretation by agencies and courts, and what deference is or is not given by courts. Each implicates the legislative process and congressional capacity. Congress must improve the quality of the legislation it drafts and increase its own knowledge about how agencies and courts interpret laws.

The working group released its report and recommendations in March 2025.³ Because the working group found that the burden of accounting for the Supreme Court's decisions will fall heavily on committee staff, the House Office of Legislative Counsel (HOLC), and legislative branch support agencies, several recommendations pertain to these entities.

Expand Committee Resources

Congressional committees are the principal vehicle for examining problems, developing solutions, and refining legislation. In the wake of *Loper Bright* and the major

² Most prominently, *West Virginia v. EPA*, 579 U.S. 697 (2022).

³ Bipartisan Policy Center, "Legislating After *Loper*: Practical Solutions for a Post-*Chevron* Congress," March 2025, at: <https://bipartisanpolicy.org/report/final-report-and-recommendations/>.



questions doctrine cases, these activities will only grow more critical. Over time, however, committee staffing and funding have declined. Congress cannot improve the legislative process—expressing delegations more clearly and improving directions provided to agencies—without adequate committee resources.

The working group recommends more funding to expand the hiring of policy and legal staff on committees. It also recommends additional funding to allow committees to hire temporary expert staff when needed for particularly complex or time-sensitive topics.

Additionally, committees will need an improved understanding of constitutional and legal issues that specific bills may present. In conversations with current and former Hill staff, the working group heard that members and staff are often unaware of such issues regarding their legislation. The working group determined that personal offices and committees need capacity to identify and understand these issues rather than relying solely on the input of other entities such as HOLC. As discussed below, HOLC capacity is already strained.

Modeled on the House Chief Administrative Officer’s Coach program—which by many accounts has been successful and well received—the working group suggests the creation of new liaison positions. Ideally filled by former committee counsels, these positions would work with personal office and committee staff to improve legislative drafting and help them anticipate and address legal and constitutional issues.

Ensure Adequate Capacity at House Office of Legislative Counsel

Demand for HOLC services continues to grow. As this subcommittee has heard on previous occasions, staffing needs have not kept pace with the increasing number of member requests, as well as bills, amendments, and resolutions drafted by HOLC. One important



consequence of *Loper Bright* is that, since there is a single best meaning of statutes, legislative language must be as straightforward as possible and incorporate more information regarding congressional purposes and goals.

The working group encourages this subcommittee to ensure that HOLC staffing is commensurate with rising demand. The working group also recommends that the subcommittee consider new resources for HOLC dedicated explicitly to reviewing legislative drafts for clear language regarding delegations of authority and expressions of purpose.

Provide Sufficient Resources to Legislative Branch Support Agencies

The Congressional Research Service (CRS) and Government Accountability Office (GAO) are essential to helping Congress do its job well. Yet staffing levels at these two agencies have fallen over the last 30 years. The working group identified two areas requiring additional work, particularly from CRS. First, we recommend that the subcommittee use report language to instruct CRS to regularly summarize and disseminate an overview of commonly used “canons of construction.” These interpretive judicial doctrines often shape how congressionally enacted statutes are implemented. Congress must take stronger consideration of them during the legislative drafting process, which requires additional resources. Second, we recommend that the subcommittee use report language to instruct CRS to create a tracking list of judicial decisions that find violations of the major questions doctrine.

Congress needs more information about how its statutes are interpreted and implemented, especially by courts. CRS currently produces some of this information, yet recent Supreme Court decisions necessitate even more—and more frequent—production of



such information. We recommend that this subcommittee ensure CRS (and GAO, as needed) have the requisite resources to keep members and staff well informed on judicial decisions and statutory interpretations.

We're grateful for this subcommittee's support of the legislative branch and attention to areas of need. Congress must invest in itself to fulfill its constitutional responsibilities, starting with the most basic input: people. Expectations of the legislative branch will only increase in the wake of *Loper Bright* and major questions cases. To meet those expectations and ensure capacity keeps pace with demand for congressional attention, we encourage this subcommittee to confidently and boldly assert the need for additional staffing resources across committees, HOLC, and support agencies.

Thank you for the opportunity to provide this testimony. More information can be found in the recent [BPC report](#). The Working Group on Congress, Courts, and Administrative Law and BPC's policy experts stand ready to further support you in these efforts.



Heidi Heitkamp
U.S. Senator (D-ND), 2013-2019



Mel Martinez
U.S. Senator (R-FL), 2005-2009

