

**Testimony before the Select Committee on the Modernization of Congress
United States House of Representatives**

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**“Enhancing Committee Productivity through Consensus Building”
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Chair Kilmer, Vice-Chair Timmons, and Members of the Select Committee: thank you for inviting me to testify today. My name is Scott Adler and along with my administrative duties as Dean of the Graduate School at the University of Colorado Boulder, I am also professor of political science. For nearly all of my career I have studied the U.S. Congress, with a particular emphasis on the structure, reform and performance of congressional committees.

I am grateful for the efforts of the members of this panel in addressing these important topics.

The points I'd like emphasize today are:

- First, the central role legislative committees play in Congress's governing responsibilities
- Second, how that role has significantly diminished in recent years
- Third, that strengthening the position of committees will improve Congress's legislative capacity and lawmakers' engagement in policymaking

- Finally, I'll offer some suggestions for how the House can bolster the committee system to achieve these goals

The example of the *21st Century Cures Act* and the dynamic that developed between Representatives DeGette and Upton in many ways highlights exactly what is important about the place of legislative committees as a venue for lawmakers to develop expertise, build personal relationships in their caucus and across the aisle, incorporate input from stakeholders, and retain skilled and knowledgeable staff.

Historically, these aspects of committees both promote lawmaking activities by members and place committees at the forefront of policy innovation.

But lawmaking should perhaps best be thought of as a muscle that committees must continually exercise for it to remain strong. For many years and for a variety of reasons, that muscle has atrophied. The data are clear: committees are reporting a smaller proportion of the bills enacted into law, federal agencies and programs increasingly exist under expired authorizations, and the House and Senate authorizing committees are far less utilized in negotiating inter-chamber differences than in the past.

Many congressional observers, including many lawmakers, recognize that some committees and the committee system as a whole does not retain the position it once held as the center of policy making and oversight authority. When committee power diminishes, the body becomes more reliant on centralized leadership and outside stakeholders, which reinforces the atrophy of committees as a means of legislative engagement.

Certainly, there is plenty about the old days of congressional committee dominance that was undesirable. But if we seek a structure that engages and incentivizes members of Congress to collaboratively invest in policy making, it almost by necessity involves a reinvigoration of the committee system.

Bolstering committees achieves some very concrete and important goals.

At the macro-level a vigorous committee system:

- Incentivizes specialization so that Congress has the technical knowledge to skillfully debate and resolve policy differences
- Makes it easier for Congress to reliably address policy problems
- And ultimately improves and rebalances the position of Congress with respect to the executive branch

For lawmakers, strong legislative committees:

- Provide all members the opportunity to continually engage in productive and collaborative policy making
- Facilitate regular interaction with stakeholders through a relationship focused on revisiting and updating federal policy
- And offer productive ways to demonstrate to constituents their legislative abilities

However, without a clear and predictable process for members to regularly legislate, they will turn their energies elsewhere. Lawmakers are politically ambitious and smart. These are the attributes that got them here. If lawmakers do not expect their investment in policy knowledge and the skills of navigating Capitol Hill will pay off in tangible ways, they are likely to – and very often do – pursue activities that detract from meaningful legislative engagement.

How, then, should we reinvigorate the committee system? This panel itself has already considered and made a number of meaningful recommendations, and we have heard other very good suggestions from the witnesses here today. But let me offer a few additional thoughts.

Lawmakers need to see that there is payoff in their investment of knowledge, skill, time, and resources.

- First, a return to routine reauthorizations provides a much-needed rhythm to oversight and governance of the executive branch. Our work shows that it offers a better structure and schedule to the operations of committees and can lower the legislative stakes through regular opportunities to revisit existing policy.

- Additionally, we also know that lawmakers respond to actions taken by the chamber and leadership that assure committee work will have fair consideration by the entire body. Even better, if the chamber can provide a degree of protection so that their efforts won't easily unravel once reported out of committee.

To be sure, I don't believe that the entire committee system is broken. In fact, over the next several months you will see bills from several committees that still retain their ongoing policy leadership role.

In particular, the annual work of Armed Services and Appropriations are good examples of committees who regularly exercise their policymaking and oversight responsibilities. A more regular reauthorization process, even annual reauthorizations like the NDAA, may help other committees achieve this rhythm.

Ultimately, there are many alternatives for strengthening the committee system and lawmaker engagement and I appreciate this committee's thoughtful consideration of this important topic.

Thank you and I look forward to your questions.

Dr. E. Scott Adler: Professional Background

Scott Adler is Vice Provost and Dean of the Graduate School & Professor of Political Science at the University of Colorado Boulder. He is also Former Founding Director of the American Politics Research Lab. Dr. Adler has spent most of his 25-year career at CU Boulder studying the organization and performance of the U.S. Congress, and his current research examines congressional agenda setting and committee power. Among his many publications, he is the author of [Why Congressional Reforms Fail: Reelection and the House Committee System](#) and co-author of [Congress and the Politics of Problem Solving](#). Dr. Adler received his B.A. in political science from the University of Michigan, and his Ph.D. in political science from

Columbia University, and was a member of the American Political Science Association's Presidential Task Force on Congressional Reforms.

Improving the Legislative Operations of Congressional Committees

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Summary

Our recommendations for modernizing Congress begin from a straightforward premise: members put more effort into legislating when their ideas have a chance of becoming law. As such, we have developed two recommendations that will make the legislative process more effective, efficient, and transparent; that respond to bipartisan concerns raised about the bill development process; and account for the contemporary realities of congressional lawmaking. These two recommendations work best when adopted together but can be implemented separately. We also make a third recommendation regarding committee jurisdictions.

1. Standing committees move to an annual authorization process.

Annual authorizations encourage committees to create a more routinized approach to legislating in order to provide reliable opportunities for lawmakers to update public policy and oversee executive branch agencies and programs.

2. A procedural change, “guaranteed regular order” (GRO), which ensures committees and other members play important roles in developing major authorization bills.

Guaranteed regular order provides a procedural pathway for committees to ensure their work is considered and that other members can offer their input and expertise.

For standing committees, adopting an annual authorization process and/or GRO bolsters their lawmaking and oversight roles. For members, these reforms will foster civility, collaboration, and bipartisanship. It provides a venue for them to continually interact and build relationships with colleagues who share similar policy interests. Both standing committees and lawmakers stand to gain from adopting these reforms.

3. Committee jurisdictions should be left as they are unless and until there is widespread and bipartisan consensus for a wholesale reconfiguration of committee policy authority.

Goals

In developing these recommendations, we were guided by four goals:

1. Reinvigorate Congress’s oversight of executive branch agencies and fulfill Congress’s constitutional obligation to create and update federal law.
2. Reestablish the role and authority of committees, particularly authorizing committees, in the lawmaking process.
3. Incentivize lawmakers to invest in policy specialization and law development and bolster bipartisan participation in committee bill development.
4. Enhance stakeholder investment in committees as policy agenda setters.

Recommendations #1: Annual Authorizations

As one of the primary mechanisms for Congress to legislate, evaluate program effectiveness, and oversee the executive branch, the authorization process has steadily withered over several decades. We propose to reinvigorate and expand congressional authorizations in a manner that bolsters committee policy involvement and creates more opportunities for bipartisan participation by lawmakers. Annual authorizations would work as follows:

- As a first step, committees are required to markup one bill per year that reauthorizes an expiring or expired federal program, unless waived by a 3/5 majority vote by the full committee.
- Gradually as lawmakers and staff increase their familiarity and comfort with the reauthorization process, committees fold more of their expiring legislation in a growing annual authorization.
- For matters involving the jurisdiction of other committees, either:
 - before offering any amendment that involves the jurisdiction of other House committees, committee members provide a letter from the respective committee chairman indicating a waiver of the right of referral.
 - if the other committee chooses not to waive its jurisdictional rights, the Speaker can provide for a sequential referral with the committee of jurisdiction over the annual authorization being the “primary” committee.
- Bolster the lawmaking activities of subcommittees through committee rules that divide up sections of the annual authorization by subcommittee jurisdiction.

Justification

Among the leading factors in the diminished role of committees has been Congress’s inability to complete, and in many cases even consider, the reauthorization of expiring programs, agencies and laws.¹ For a very large number of committees, the lack of reauthorizing activity leaves the committee with little active role in lawmaking.² One very notable exception to this pattern is the National Defense Authorization Act (NDAA), with its 60 years of uninterrupted passage. The NDAA offers a striking example of how committees, operating in a bipartisan manner, are central to lawmaking and maintain congressional oversight of executive functioning.³

We propose that other committees emulate this same process for their yearly activity. The aggregation of critical lawmaking into bigger authorizations allows committees to combine the agendas of different members and increases the likelihood that a lawmaker’s priority legislative language is adopted.

The intent of expanding annual authorizations is to reestablish congressional control of programs and agencies by taking them off autopilot and returning them to a regular in-depth review of their effectiveness and an updating of their enabling legislation.

Advantages

¹ Adler, E. Scott, Stefani R. Langehennig, and Ryan W. Bell. “Congressional Capacity and Reauthorizations.” In *Congress Overwhelmed*, 191–208. University of Chicago Press, 2020.

² See Sinclair, Barbara. *Unorthodox Lawmaking: New Legislative Processes in the US Congress*. 5th ed. Washington, D.C: CQ Press, 2017; Curry, James. “Change and Continuity for Committees in Congress,” in *New Directions in Congressional Politics*, Jamie Carson and Michael Lynch, eds. Second edition.

³ Chuzi, Amanda. "Defense Lawmaking." *Columbia Law Review* 120.4 (2020): 995-1034.

- Ensure that governing keeps up to date with changing circumstances and congressional priorities (Goals 1 through 4).
- Incremental changes associated with single-year authorizations lower the stakes for losing coalitions, providing opportunity to revisit legislative decisions annually (Goals 1 and 2).
- Provide lawmakers and staff regular authorizing activity to prevent institutional atrophy (Goal 3).
- Ensures that lawmakers and their staff keep in regular contact with policy stakeholders in executive agencies and outside of government (Goal 4).
- Ongoing opportunities for positive and productive interactions amongst lawmakers of both parties and a place for open discussion of policy differences (Goal 3).
- Regular opportunities for lawmakers to have their policy ideas seriously considered and included in important legislation (Goals 1 and 3).

Other Considerations

- The Senate lawmaking process and bills may need to be adapted to fit the new House legislative format.
- Requires long-term and bipartisan commitment to a sizable committee workload from chairs and rank-and-file members.
- Likely to require a variety of augmentations of congressional staff (many of which are part of prior SCMC recommendations):
 - Expansion of some committee staff and investment in retaining those staff.
 - Creation of non-partisan committee staff positions.
 - Expansion and investment in congressional support units (CBO, CRS, etc.).

Recommendation #2: Guaranteed Regular Order (GRO)

Guaranteed regular order provides a procedural pathway that ensures a bill is considered once it leaves committee, provides committees more control in developing a bill's content, requires a more open and deliberative legislative process, and incentivizes lawmakers to invest in a measure's development. GRO works as follows:

Every calendar year, each standing committee has one opportunity to move a major authorization through guaranteed regular order. GRO bills differ from other measures in two important ways: 1) they are privileged business, like appropriations bills or budget resolutions⁴ and 2) they include a set of procedures that affects how they are treated throughout the legislative process. Committing to GRO begins in the standing committees, in which the following procedures must be followed:

- The bill authorizes a major program and is marked up in the full committee, during which majority and minority party amendments are considered.
- When reporting a bill, the standing committee includes a:
 - letter informing the chamber that the bill meets the GRO requirements and should be treated under GRO procedures.

⁴ Per clause 5(a) of Rule XIII

- recommendation for the bill’s special rule, including the amount of floor debate and amendments the committee prefers.
- slate of bipartisan conference committee members to be appointed in case the chambers must resolve differences.

After a bill is reported from committee:

- The Rules Committee can write a special rule, with the only restriction being that the Rules Committee cannot adopt self-executing provisions that alter the bill’s content. If the Rules Committee does not adopt a special rule, the GRO bill remains privileged business and can still receive floor consideration.
- If a conference committee is appointed, the Speaker of the House can appoint the committee’s recommended slate or add additional committee members to it.

Justification:

When a committee invests in developing policy, it needs confidence its legislation will be considered. GRO provides this opportunity. It enhances committee control over its major authorizations and provides open, deliberative policy development. GRO facilitates a legislative process that is effective in the modern Congress by creating a reliable, annual lawmaking opportunity during which members can revise programs, conduct oversight, and attach their smaller, germane measures to a larger bill.⁵

Advantages:

- Creates a reliable opportunity committees can use to move important legislation, with the knowledge that its work will not be undone later in the legislative process (Goals 1 through 4).
- Addresses members’ preference to return to regular order in a meaningful way (Goals 2 and 3).
- Increases minority party members’ opportunities to participate in the legislative process (Goal 3).
- Bills developed with bipartisan input have a better chance of passing the Senate and being signed into law,⁶ and creating durable policy changes⁷ (Goals 1, 2, and 4).
- Provides more opportunities for lawmakers to have their ideas considered and voted on (Goal 3).

Other Considerations:

- GRO may not produce more bipartisan votes on major reauthorizations than bills developed using ‘unorthodox’ legislative procedures.⁸

⁵ See: Adler, E. Scott and John Wilkerson. 2013. *Congress and the Politics of Problem Solving*. Cambridge University Press.; Casas, Andreu, Matthew Denny and John Wilkerson. 2020. “More Productive Than We Thought: Accounting for Legislative Hitchhikers Reveals a More Inclusive and Productive Lawmaking Process.” *American Journal of Political Science* 64(1): 5-18.

⁶ Curry, James M. and Frances E. Lee. 2020. *The Limits of Party: Congress and Lawmaking in a Polarized Era*. University of Chicago Press.

⁷ Maltzman, Forrest and Charles Shipan. 2008. “Change, Continuity, and the Evolution of the Law.” *American Journal of Political Science* 52(2): 252–267.

⁸ Curry, James M. and Frances E. Lee. 2020. “What is Regular Order Worth? Partisan Lawmaking and Congressional Processes.” *Journal of Politics* 82(2): 627-641.

- The House’s transition away from regular order was pursued as a means of avoiding deadlock.⁹ The same issues that moved the House away from regular order persist and are more prevalent.
- Open amending processes allow for messaging votes members may prefer to avoid.
- More public negotiations can make it more difficult to reach a bipartisan deal.¹⁰
- In practice, scheduling GRO measures for floor consideration requires coordination between majority party and committee leaders. By privileging these bills, while offering a path through the Rules Committee, it is more likely the House will consider the committee’s version.
- Adopting GRO would require modifying the House’s rules.

Connection Between Annual Authorizations and GRO

Annual authorizations and GRO complement one another but can be adopted separately. Annual authorizations would work more effectively if moved through the GRO process. GRO would be more readily adopted and used more often if the House moved towards annual authorizations. However, neither requires the other to work. As the NDAA shows, annual authorizations are viable without new procedures being adopted. Standing committees can use GRO to move large authorizations whenever they decide to address that topic. Each reform, and its benefits, stands on its own.

Recommendation #3: Leave Committee Jurisdictions Alone

Committee jurisdictions are a constant source of debate and have been a target of reform movements at many different points in modern congressional history. There are nearly infinite permutations and combinations of policy areas, with no ideal set that would result in optimal lawmaking activity. The one thing that is certain is that proposals for the reconfiguration of policy jurisdictions will be met with fierce opposition and can likely poison the waters for other well intentioned and considered reforms.¹¹

While improvements can be made on the margin, substantial and meaningful changes require a wholesale restructuring that would likely also need the alignment of Senate committee jurisdictions. Unless and until the entire Congress – leadership, committee chairs, rank-and-file, both parties – have the inclination and time for a top-to-bottom restructuring it is not worth the very costly political capital to do any rearrangement of policy jurisdictions.

⁹ See: Sinclair, Barbara. 2016. *Unorthodox Lawmaking*. CQ Press: Washington DC; Curry, James M. and Frances E. Lee. 2020. *The Limits of Party: Congress and Lawmaking in a Polarized Era*. University of Chicago Press.

¹⁰ Curry, James M. 2015. *Legislating in the Dark*. University of Chicago Press.

¹¹ Adler, E. Scott. *Why Congressional Reforms Fail: Reelection and the House Committee System*. Chicago: University of Chicago Press, 2002.