

**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 2022 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 2022 (“FY’22”) budget request of the Office of General Counsel (“OGC”). For FY’22, OGC requests \$1,912,000; \$1,716,000 for personnel costs and \$196,000 for non-personnel costs. OGC’s FY’22 budget request represents an increase of \$97,000 (5.34%) over OGC’s FY’21 enacted funds of \$1,815,000. A justification of the requested increase over the amount of FY’21 enacted funds appears below.

**Functions of the Office**

Pursuant to Rule II.8(a) of the Rules of the House of Representatives (117th Cong.), OGC provides legal representation and advice to the House and its Members, Committees Officers, employees, and other legislative branch entities (e.g., GAO, CBO, and CRS), without regard to political affiliation, on matters related to their official functions and 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 two law clerks, and an office administrator.

The FY 22 request for non-personnel expenditures, \$196,000.00, is slightly less than the FY 21 request. OGC strives to be efficient, economical, and a good steward of taxpayer funds. Thus, our non-personnel expenditures have remained consistent, with minimal fluctuation over the last few budget cycles.

The largest expenditure for OGC is salaries. The additional funds in the FY 2022 budget request is due to meritorious pay increases required to maintain salary levels sufficient to recruit and retain highly qualified senior attorneys (deputy, associate, and assistant general counsel) who play a significant role in handling the work of the office. Failure to fully fund the OGC request increases the likelihood of needing to outsource significant legal services to private attorneys. It is much more cost effective to utilize experienced in-house attorneys to handle as many litigation matters as possible, rather than outsourcing legal services to private lawyers and law firms. This is particularly true given the uniqueness, importance, and complexity of the legal services and litigation involving the House, as well as the high hourly rate charged by similarly experienced and competent private counsel.

Consistent with recent budget requests, OGC anticipates that it will continue to actively participate in litigation during the upcoming fiscal year. Such litigation may include cases in which the House directs OGC to sue to enforce House actions and interests, to intervene or file amicus briefs in pending cases, or to defend actions taken by the House and/or its various Members, Committees, Officers, and employees from legal challenge.

OGC proposes to handle this anticipated litigation, to the extent practicable, with OGC attorneys and law clerks. However, it is possible that some matters may require OGC to enter into contracts for paid legal services with private attorneys. OGC will, whenever possible, attempt to enlist pro bono legal services at no cost to the taxpayer. In the event it transpires that additional funds are needed for 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.