

**STATEMENT OF MATTHEW BERRY, GENERAL COUNSEL
OFFICE OF GENERAL COUNSEL
U.S. HOUSE OF REPRESENTATIVES**

**REGARDING THE FISCAL YEAR 2025 BUDGET REQUEST
OF THE OFFICE OF GENERAL COUNSEL**

**BEFORE THE LEGISLATIVE BRANCH SUBCOMMITTEE
OF THE COMMITTEE ON APPROPRIATIONS**

APRIL 17, 2024

Chairman Valadao, Ranking Member Espaillat, and Members of the Subcommittee, I appreciate the opportunity to testify about the fiscal year 2025 (“FY 2025”) budget request of the Office of General Counsel (“OGC”) of the U.S. House of Representatives (“House”). OGC requests \$2,048,000 for FY 25, a sum that includes \$1,825,000 for personnel costs and \$223,000 for non-personnel costs. This budget request represents an increase of approximately three percent over the appropriation OGC received for FY 2024. In this testimony, I will first discuss the important work carried out by OGC and then set forth the justification for OGC’s FY 2025 budget request.

Functions of the Office

Pursuant to Rule II.8(a) of the Rules of the House (118th Cong.), OGC 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. With respect to litigation matters involving the House, OGC 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 is involved in the following types of matters with some frequency:

- **Judicial Proceedings:** OGC represents the House in litigation, and also represents House 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 declines 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, for immunity orders for witnesses.

- **Committee Subpoenas:** OGC provides advice to House Committees in connection with the preparation, issuance, and enforcement of 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, and FOIA requests) from governmental agencies (including the Department of Justice), as well as from private parties.
- **Privileges:** OGC provides advice to House Members, Committees, Officers, and employees 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.
- **Social Media Guidance:** OGC advises House Members, Committees, Officers, and staff regarding best practices for the use of official social media accounts.
- **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.
- **Constituent Casework:** OGC provides advice to Members and their staffs regarding the legal issues related to 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.
- **MPCECA Claims:** OGC reviews and evaluates claims for administrative resolution by the Committee on House Administration under the Military Personnel and Civilian Employees' Claims Act, which provides an administrative remedy for House employees whose personal property was damaged incident to their federal service.
- **Tax Matters:** OGC advises House offices and vendors regarding applicable tax exemptions for official purchases.
- **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.

Demand for OGC's services has been extensive in recent years, as has the number of complex and high-profile legal matters that the office has been asked to handle.

Justification for the FY 2025 Budget Request

At normal staffing levels, OGC is comprised of the General Counsel, Deputy General Counsel, several senior attorneys with extensive legal experience, multiple law clerks, and an office administrator/member services director.

Based on the proposed funding level set forth in OGC's FY 2025 budget request, I expect OGC to be able to continue to deliver the same level of effective service we currently provide to the House. The vast majority of OGC's budget request, almost 90%, is for the personnel compensation needed to retain the highly qualified attorneys and staff who handle the bulk of OGC's workload.

As noted in our budget request, there exists a distinct probability that OGC will be required to undertake significant litigation during FY 2025. 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. It is therefore critical that OGC have the resources necessary to maintain a staff of talented attorneys capable of skillfully handling such matters.

In past years, OGC has on occasion, before my tenure as General Counsel, utilized private attorneys to handle certain cases. Such legal services have been provided to OGC by private attorneys on a pro bono basis, and OGC has also entered into contracts with private attorneys for paid legal services. Previously, such contracts have required the reprogramming of funds to increase OGC's budget. In FY 2025, OGC will seek to utilize its own staff to litigate cases wherever possible. And if the need for private attorneys should arise, OGC always will first seek to have such legal services provided on a pro bono basis; during FY 2025, OGC will only enter into contracts for paid legal services with private attorneys as a last resort.

Non-personnel costs represent roughly 10% of the OGC budget request. The primary drivers of non-personnel costs include: servers, computers and technology, printing costs for submitted court documents, subscription access to research platforms, and standard office supplies and equipment. We anticipate increased travel-related expenses with OGC attorneys representing the interests of the House in-person outside of Washington, DC.

In conclusion, it is an honor to serve the House and to lead OGC's talented team of professionals. OGC's FY 2025 budget request will give us the resources necessary to continue to provide the House with high-quality legal advice and representation. Thank you for considering this request, and I would be pleased to respond to any questions the Subcommittee might have for me today.