

**Testimony of Michael Stern Before the House Appropriations Subcommittee on the  
Legislative Branch for Fiscal Year 2027**

Chairman Valadao, Ranking Member Espaillat, and Members of the Subcommittee, thank you for the opportunity to submit this testimony regarding the Fiscal Year 2027 budget request of the Office of General Counsel for the U.S. House of Representatives (OGC). I have served in various capacities on the Hill as a lawyer and staffer. Most relevant to today's subject, from 1996 to 2004, I was senior counsel in OGC, where I handled a broad range of legal matters for the House and its leadership, members, officers, committees, and staff. Since then I have written on numerous congressional legal issues, including at the Point of Order Blog, and have worked with various groups interested in congressional capacity, transparency, and reform.

Today I will address the need for an enhanced public-facing role for OGC and greater transparency for its activities and those of the Bipartisan Legal Advisory Group (BLAG), which advises the Speaker with regard to the functioning of OGC and is responsible for articulating the institutional position of the House in all litigation matters. While OGC has a public website with some very general information about its functions, as well as a selection of its most recent filings, there is a great deal of additional non-confidential information that would be useful to the public. Moreover, BLAG itself has no website and there appears to be little if any information about its operations in any official House source.

This lack of transparency is particularly concerning because it is in the House's institutional interest for the public to have more information about its legal positions and how they are

formulated. A member of the public seeking to learn about the House's views on important legal controversies would find it very difficult to do so. Legal scholars and commentators are similarly disadvantaged by the lack of access to the opinions of the House's most knowledgeable experts. By contrast, the Justice Department's Office of Legal Counsel maintains a website on which its numerous legal opinions in support of executive power can easily be accessed. This imbalance of information undermines the House's institutional legal positions in court and with the public, particularly on oversight and other separation of powers issues where it frequently clashes with the executive.

I will give you one recent example of an OLC opinion which threatens congressional oversight prerogatives. In 2024 the OLC issued an opinion finding that a subpoena from the House Foreign Affairs Committee to Secretary of State Anthony Blinken was invalid because it required him to testify at a time when he had important diplomatic meetings in New York on his schedule. The idea that congressional subpoenas are invalid whenever the executive branch believes it has more important things to do is a novel and dangerous one. (Indeed, no less an authority than Paul Colborn, a recently retired veteran of OLC, has publicly expressed concerns about the threat this opinion poses to congressional oversight).

Enhancing the website would be a small step toward goals articulated during the 2021 hearings of the House Select Committee on the Modernization of Congress. Legal Scholars told the committee that Congress should consider establishing a "Congressional OLC" to articulate Congress's institutional prerogatives, to counter legal theories advanced by the Justice

Department and OLC, and to inform the executive branch of Congress's oversight expectations. This proposal led to a GAO study published in December 2023 on the feasibility of establishing such a congressional legal office.

OGC began in the late 1970s through the General Counsel to the Clerk, who provided many of the same functions as the statutorily established Senate Legal Counsel. OGC was first formally recognized by rule in 1993, but that rule simply established an Office of General Counsel "for the purpose of providing legal assistance and representation to the House," which was to "be provided without regard to political affiliation." The rule also provided that OGC "shall function pursuant to the direction of the Speaker, who shall consult with a Bipartisan Legal Advisory Group, which shall include the majority and minority leaderships." This rule remains to this day the primary source of OGC's authority and responsibilities, although subsequent statutory enactments provide some additional minor details about its functions and administration. See 2 U.S.C. § 5571 (authorizing automatic pro hac vice admission for OGC lawyers to state and federal courts and requiring the Attorney General to notify OGC, among other congressional officials, of a determination not to defend the constitutionality of a federal law).

For the most part, therefore, OGC's functions and methods of operation have been developed through practice and informal understandings over time. Many of OGC's functions and practices are obscure even to most members and staff of the House, much less to the general public. As for BLAG, during my tenure the only formal existence of that body consisted of the single reference in the House rule establishing OGC. Since that time, the House rules have been

amended to provide that BLAG “speaks for, and articulates the institutional position of, the House in all litigation matters,” but there is to my knowledge no public information about how BLAG exercises that responsibility, whether it meets regularly (or at all), whether there are any rules governing its deliberations, or anything else about its activities.

Unlike the Senate Legal Counsel, OGC has no mandated public-facing or educational role. OGC does have a public website, but it currently provides relatively little information regarding its activities. Since the last time I testified on this subject, the website has been improved in one significant respect- it has a “Recent Notable Cases” tab which provides links to some important filings that the OGC has made in the last two years. However, useful information that was previously on the website, including filings and court rulings in areas of the law most relevant to OGC’s practice, is no longer available. Perhaps this information is now behind the “For Congressional Offices” tab that is not accessible to the public.

The only information on BLAG on the website currently can be found in the footnotes of OGC briefs, which reflect whether BLAG has voted to authorize the filing and, if so, whether the vote was unanimous or on a party line vote. At a minimum, it would be useful to have a list of all public BLAG votes on the website.

## **Recommendation**

It is in the public interest to understand how OGC and BLAG operate and fulfill the important functions they are given under the House rules. It is also in the House's interest to educate the public regarding the substance of the positions that it has taken on important legal controversies of the day and to provide some balance to legal arguments made by executive branch lawyers at the Office of Legal Counsel and elsewhere. While the House cannot compete on an even playing field with the legal resources of the executive branch, it can take modest steps to improve its outreach and communicate more effectively with the public.

Accordingly, I urge the subcommittee to ensure that OGC's funding for FY 2027 is adequate to enhance its capacity to improve its public website and provide important legal information to the public. OGC should be directed to expand its website to provide non-privileged information about its legal advice and representation, including court filings, legal opinions, and select explanatory or historical documents that would shed light on its operations and the legal views of the House. A good place to start would be with the "For Congressional Offices" tab, which undoubtedly has a good deal of information that is public or can easily be made so. The website should also include basic information about BLAG, such as a description of what BLAG is, who serves on it, how it functions, and instances when BLAG authorizes or directs OGC to take a legal position.

Thank you again for the opportunity to submit this testimony.