

Testimony of Representative Bradley Byrne

Chairman Harper and Ranking Member Brady, I appreciate the opportunity to testify before you today on this important topic.

I know I speak for the vast majority of my colleagues in the House - Republicans and Democrats - in saying that recent allegations of sexual harassment occurring in the congressional workplace are both disturbing and unacceptable. Based upon my conversations with many of you, I know that the Members of this Committee and the Ethics Committee take this issue with utmost sincerity. As a rank-and-file member, I thank you for your work.

Title VII of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, religion, sex, or national origin. In the 1980s, the Equal Employment Commission (“EEOC”) began recognizing sexual harassment as a form of sex discrimination under Title VII. In 1986, sexual harassment was recognized by the Supreme Court as a violation of Title VII. In 1991, Congress allowed aggrieved parties to obtain jury trials and recover compensatory and punitive damages. And, in 1995, Congress passed the Congressional Accountability Act of 1995 (“CAA”), subjecting the Legislative Branch to numerous employment statutes, including Title VII of the Civil Rights Act and its prohibition against sexual harassment.

Before being elected to the House in 2013, I spent over 30 years in the private practice of law with a specialty in labor and employment. As part of my practice, I advised businesses on harassment policies and procedures. I conducted and implemented training for employees and employers. I also litigated numerous sexual harassment cases and oversaw dozens of investigations in allegations of harassment. My years

in practice corresponded with the development of the vast majority of case law governing sexual harassment practice in the workplace.

Based on my prior experience and recent research into the current policies regarding harassment here in Congress, I want to make a few observations and offer some of my own suggestions to help bring the House in-line with policies and procedures that are prevalent in private sector. Some of these ideas could be implemented immediately while others would require long-term work of this committee through the legislative process.

1. Mandate Harassment Training.

Sexual harassment training is already common practice in the private sector workplace. I strongly believe the House should require mandatory sexual harassment training for all House employees. Recent events have demonstrated that training, while available to Members of Congress and House employees, is underutilized.

Training is important to both inform regarding what constitutes harassment but also to provide individuals with ways to seek recourse. Last year, the Office of Compliance (“OOC”), which is responsible for the process of adjudicating employment claims against congressional offices had only five claims filed in both the House and the Senate. Given the thousands of individuals who work in the Congress, it is apparent that many do not know they have recourse against unwanted sexual harassment or do not know how to respond if they are faced with sexual harassment. Mandatory training would go a long way towards raising awareness and remedying this situation.

I will also note that mandatory training in the House is not unprecedented and already required for ethics and computer security.

There are also multiple harassment trainings currently provided by different congressional support offices. It is my opinion that this Committee should settle on one, high-quality training product to make sure that all House employees are trained in the same manner.

2. Consider a Universal Harassment Policy for all House Employees

Although not required by law, creating and enforcing anti-harassment policies is now a near universal norm in the private sector.

As you are aware, each individual congressional office is an independent hiring authority. We likely all agree that this is important to maintain an independent and effective Legislative Branch. However, congressional employment is unique. Employees often move around between office-to-office or have multiple employing offices. Employee managers and Members are also frequently lacking in previous private sector management experience. And, of course, taxpayers foot the bill for our employee's salaries and pay the bill when there is unlawful harassment. The powerful monetary incentive on business owners to adopt and enforce anti-harassment policies can thus be missing in the public sector.

Given the unique nature of House employment, it is my opinion that a uniform, universal anti-harassment policy, based upon the CAA and applicable to all House employees, would be much more effective in curbing unwanted sexual harassment than the current patchwork of different harassment policies that we have today throughout offices on Capitol Hill. Congressional offices could, of course, supplement this policy, as they can with most other universal policies governing Hill employment.

With a universal policy, no employee would be without a written policy governing their conduct or unaware of their rights. Moreover, the

training of House employees would be simplified and made consistent across the House. Current training available has many references to “what your office policy probably contains.” With a universal policy, all Members and staff would know the rules of the road and what was expected of them.

We already have uniform policies on things such as reimbursement and technology. One policy covering all employees, in my opinion, would in no way disrupt the important role independent hiring authority plays in the Legislative Branch and would be beneficial to curbing sexual harassment.

3. Examine the Congressional Accountability Act and Consider Improvements to the Complaint and Enforcement Process.

It has been over twenty years since Congress enacted the Congressional Accountability Act. I believe this is an opportune time to revisit and consider revisions to this important statute.

The statutory provisions governing harassment claims in the Legislative Branch are different than those that govern private sector employment and other public employees. In the private sector, the EEOC administers and enforces laws against workplace discrimination. The EEOC investigates discrimination complaints based upon a protected class, and retaliation for reporting, participating in, and/or opposing a discriminatory practice.

The process begins by an aggrieved party filing a charge with the EEOC. The EEOC then has the option to request the parties engage in mediation; however, mediation is not required for either party. If mediation is not requested or is unsuccessful, the EEOC has investigatory power, including subpoena power. After the investigatory process, the EEOC has the right to bring a case upon an aggrieved

individual's behalf or to issue the individual a right to sue letter, allowing the aggrieved party to bring litigation. In most circumstances, the EEOC must issue a right to sue letter after 180 days, allowing an individual the right to bring litigation in court.

In contrast, the CAA process for Legislative Branch employees provides for a mandatory dispute resolution process. An aggrieved party must go through a period of counseling with the OOC, generally for 30 days. Next, the aggrieved party is required to participate in mandatory mediation. Only if mediation fails does the aggrieved party have the right to pursue a claim in an administrative proceeding or in federal court.

Although a mandatory, informal dispute resolution process for discrimination claims has its advantages, I believe we should consider updating the process to be in line with the EEOC process.

In my opinion, the OOC would likely benefit from investigatory authority and, like the EEOC, should look to remedy sexual and other forms of harassment and discrimination, rather than adjudicate it. Informal dispute resolution should be optional to the parties, not required. Similarly, although I support counseling options for House employees subject to discrimination, I do not believe an aggrieved individual should be required to obtain counseling in order to pursue their rights in a harassment claim, and confidentiality should not be forced upon an aggrieved individual. And, like the EEOC, I believe aggrieved individuals should have a right to sue after a certain period of time has elapsed.

Such an overhaul of the CAA would be a major undertaking and this committee should, of course, be thorough in the legislative process. We

must ensure that the same due process rights employers have with the EEOC are preserved for those accused in the congressional workplace.

Other suggestions for revisions to the CAA, in my opinion, would include subjecting our unpaid workforce, such as interns, pages, and fellows, to the Act's anti-discrimination provisions.

Certainly, these changes could increase the workload of the OOC, and as a body, we need to be prepared to provide the necessary appropriation to allow the OOC to do this work.

4. Increase Member Accountability

Often, I say that one of the things that has impressed me most in my time in Congress is the quality of the membership of this body, Republicans and Democrats. Most of us take very seriously the first Rule in the Code of Official Conduct that "a Member . . . shall behave at all times in a manner that shall reflect creditably on the House." For that reason, I know everyone in this room was deeply concerned to hear recent allegations that member-on-member sexual harassment has and continues to be a problem in our institution.

Given the constitutional nature of our offices, member-on-member sexual harassment is not something where harassment law in the employment structure can easily be applied. In this matter, it is my opinion that we must exercise our constitutional duty to discipline our membership.

I am certain that if presented with a claim of member-on-member sexual harassment, the Ethics Committee will take such allegations with the utmost seriousness under the authority already available to that committee. However, given the uncomfortable nature of these claims, I believe enshrining a specific policy for this kind of behavior in our Code

of Official Conduct would send a signal that member-on-member sexual harassment will not be tolerated and that members of this body support those being harassed in reporting these incidents to the Ethics Committee. Chairman Brooks, I appreciate your presence here today, and I look forward to working with you further on this proposal.

With regard to claims of sexual harassment between a Member and a staff person, I know the Ethics Committee also takes these matters very seriously and has disciplined members in the past for such behavior. However, as the House Ethics Manual states, “while the Committee may conduct investigations and disciplinary hearings and make recommendations to the full House that it formally sanction a Member, the Committee does not have the authority to order remedies such as monetary relief for an aggrieved employee.”

The Employee may be able to obtain monetary relief under the CAA; however, a settlement or judgment is paid by the taxpayers. Personally, I find this unacceptable. If a Member of Congress settles a claim as the harasser or is found liable as the harasser, it is my belief that the Member should be personally liable or required to repay the Treasury for such damages. Furthermore, any payment out of the Treasury in response to a claim of discrimination or harassment by a House office should be made in a manner that is fully transparent so that voters may take it into consideration.

Finally, it is my opinion that given the inherent power differential between a member and their staff that they supervise, we should include a strict prohibition on members engaging in a sexual relationship with staff under their direct supervision in the proposed House anti-harassment policy that I previously discussed.

Conclusion

In closing, I know I speak for us all when I say this is not and should not be a political issue. Our staff and this institution's Members should be free to do the important work our constituents sent us to do without having to worry that they will be a victim of any sort of inappropriate behavior. By quickly making some of these changes and further examining more long-term reforms, I believe we can make a significant impact on the Congressional workplace. I appreciate having the opportunity to share my perspective on these fairly complicated issues, and I appreciate the leadership of Chairman Harper and this Committee.