

Statement of
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Office of Congressional Workplace Rights
Before the Committee on House Administration
United States House of Representatives
“Oversight of the Office of Congressional Workplace Rights:
Lessons learned from the Congressional Accountability Act of 1995 Reform Act.”
November 9, 2021

Chairperson Lofgren, Ranking Member Davis, and Members of the Committee, on behalf of my colleagues at the Office of Congressional Workplace Rights (OCWR), I thank you for the opportunity to submit this statement for the record regarding the work of our Office and the lessons we have learned since the implementation of the changes embodied in the Congressional Accountability Act of 1995 Reform Act.

The OCWR and the Call for Reform

The OCWR is an independent and non-partisan legislative branch office established by the Congressional Accountability Act (CAA) in 1995. It is currently one of the smallest organizations of its kind, yet its mandate—to advance workplace and accessibility protections for approximately 30,000 legislative branch employees and countless visitors to Capitol Hill and district and state offices—is very broad. The OCWR carries out its mission through training and education programs, administrative dispute resolution, and safety and accessibility inspections.

For 26 years, the OCWR has been a constant voice for promoting and protecting the rights embodied in the CAA. Indeed, Section 102(b) of the CAA tasks the Board of Directors of OCWR to review federal workplace and accessibility laws to ensure that workplace protections in the legislative branch are on par with private sector and executive branch agencies.

Accordingly, every Congress, the Board reports on:

(A) whether or to what degree [provisions of Federal law (including regulations) relating to the terms and conditions of employment . . . of employees; and access to public services and accommodations] . . . are applicable or inapplicable to the legislative branch, and (B) with respect to provisions inapplicable to the legislative branch, whether such provisions should be made applicable to the legislative branch.

As the Board was in the process of finalizing its Section 102(b) Report for the 115th Congress, the Congressional Accountability Act of 1995 Reform Act, S. 3749, was signed into law. The new law contained several reforms intended to enhance protections for victims of discrimination or harassment, strengthening transparency, holding violators accountable for their personal conduct, and improving the adjudication process.

The CAA Reform Act incorporates several of the recommendations that the OCWR has made to Congress in past Section 102(b) Reports and in other contexts, including in testimony before this Committee as part of its comprehensive review in 2017 of the protections that the CAA offers legislative branch employees against harassment and discrimination in the congressional workplace. These changes included the following:

Mandatory Training

The Board had consistently recommended in its past Section 102(b) Reports and in testimony before Congress that anti-discrimination, anti-harassment, and anti-reprisal training should be mandatory for all Members, officers, employees and staff of Congress and the other employing offices in the legislative branch. In 2018, the House and the Senate adopted resolutions that require its Members, Officers and employees, as well as interns, detailees, and fellows, to complete an anti-harassment and anti-discrimination training program. The CAA Reform Act includes these training mandates for the congressional workforce at large. Now, employing offices (other than the House of Representatives and the Senate) are also statutorily required to develop and implement a program to train and educate covered employees on the rights and protections provided under the CAA, including the administrative and judicial dispute resolution procedures available under the CAA. These employing offices must submit a report on the implementation of their CAA-required training and education programs to this Committee and the Committee on Rules and Administration of the Senate no later than 45 days after the beginning of each Congress, beginning with the 117th Congress.

Notice Posting

The Board had long been concerned that employees who experience harassment or discrimination in the legislative branch may be deterred from taking action simply due to a lack of awareness of their rights under the CAA. The Board therefore consistently recommended in its Section 102(b) reports that Congress adopt all notice-posting requirements that exist under the Federal antidiscrimination, anti-harassment, and other workplace rights laws covered under the CAA. Through these postings, current and new employees remain informed about their rights under the CAA. The notices also serve as a reminder to employing offices about their

workplace responsibilities and the legal ramifications of violating the law. They are also a visible commitment by Congress to the workplace protections embodied in the CAA. The CAA Reform Act now requires that employing offices post and keep posted in conspicuous places on their premises the notices provided by the OCWR, which must contain information about employees' rights and the OCWR's ADR process, along with OCWR contact information.

Office Name Change

For more than 20 years, our office was referred to as the “Office of Compliance.” As the Board advised Congress in 2014, changing the name of the office to “Office of Congressional Workplace Rights” would better reflect our mission, raise our public profile in connection with our mandate to educate the legislative branch, and make it easier for employees to identify us when they need assistance. The Reform Act renamed the “Office of Compliance” as the “Office of Congressional Workplace Rights,” a name that clearly notifies legislative branch employees that the Office is tasked with protecting their workplace rights.

Extend Coverage to Interns, Fellows, and Detailees

The Board also had previously recommended in a Section 102(b) Report that Congress extend the coverage and protections of the anti-discrimination, anti-harassment, and anti-reprisal provisions of the CAA to all staff, including interns, fellows, and detailees working in any employing office in the legislative branch, regardless of how or whether they were paid. The Reform Act amended section 201 of the CAA—which applies title VII of the Civil Rights Act of 1964 (outlawing discrimination based on race, color, religion, sex, or national origin), the Age Discrimination in Employment Act, the Rehabilitation Act, and title I of the Americans with Disabilities Act—to apply the protections and remedies of those laws to current and former unpaid staff. The Reform Act thus ensures that unpaid interns, fellows, and detailees are granted these workplace protections under the CAA.

Extend Coverage to Library of Congress Employees

Prior to 2018, only certain provisions of the CAA applied to employees of the Library of Congress (LOC), and the Board expressed its support for proposals to amend the CAA to include the LOC within the definition of “employing office,” thereby extending CAA protections to LOC employees for most purposes. The 2018 omnibus spending bill amended the CAA to bring the LOC and its employees within the OCWR's (then OOC's) jurisdiction. That bill amended the definition of “covered employee” under the CAA to include employees of the LOC, and it added the LOC as an “employing office” for all purposes except the CAA's labor-

management relations provisions. Among other changes, the bill gave to LOC employees a choice on how to pursue complaints of employment discrimination—allowing them to pursue a complaint either with the LOC’s Office of Equal Employment Opportunity and Diversity Programs or with the OCWR. The Reform Act incorporates these statutory changes and further clarifies the rights of LOC employees in this regard as well as others.

Current Board Recommendations for Reform - Amend the Voluntary Mediation Provisions of the CAA’s Administrative Dispute Resolution (ADR) Procedures to Require Mediation upon Request of the Claimant

The Reform Act’s various changes to the OCWR’s ADR process are described in detail in the Prepared Statement of Teresa James, the OCWR’s Deputy Executive Director for the House. As stated therein, prior to the CAA Reform Act, the CAA’s ADR procedures required, among other things, that an employee file a request for mediation with the OCWR as a jurisdictional prerequisite to filing a complaint with the OCWR or in a U.S. District Court. Further, the CAA provided that the mediation period “shall be 30 days,” which could be extended upon the joint request of the parties. In testimony before this Committee in 2017, our Executive Director conveyed the Board’s view that, if mediation were eliminated as a jurisdictional prerequisite, it should still be maintained as an option to the parties.

As a result of the CAA Reform Act amendments, mediation is no longer mandatory— rather, mediation takes place only if requested, and only if both parties agree. This change from mandatory to voluntary mediation was enacted amid concerns that the mandatory mediation process could serve to delay the availability of statutory relief for victims of harassment or other conduct prohibited by the CAA. Concerns were also expressed that employees could view the mandatory mediation process as intimidating—especially those who were unrepresented by counsel in mediation but who faced an employing office represented by legal counsel. The amendment was also enacted amid consensus that mediation is most successful when claimants feel comfortable and adequately supported in the process.

In its Section 102(b) Report for the 117th Congress, the Board has recommended that the CAA be further amended to provide that mediation take place if requested by the claimant, or if requested by the employing office and agreed to by the claimant. The Board continues to view mediation as a valuable tool available to settle disputes under the CAA, and the OCWR’s experience has been that many controversies have been successfully resolved without formal adversarial proceedings, due in large part to its mediation processes. Mediation can save the parties from expensive and time-consuming litigation, which can drain resources and hamper workplace productivity. Mediation also gives the parties an opportunity to resolve the dispute

themselves without having a result imposed upon them. Furthermore, OCWR mediators are highly skilled professionals who have the sensitivity, expertise, and flexibility to customize the mediation process to meet the concerns of the parties.

The Board is concerned, however, that the CAA Reform Act amendments requiring the consent of both parties to mediation effectively gives the employing offices a veto over claimants who wish to attempt to settle their claims with the assistance of an OCWR mediator. None of the concerns expressed at the time the CAA Reform Act was passed warrant such a result. Moreover, none of the policies underlying mediation are furthered when an employee's request for mediation is effectively denied by the employing office. Further, there is no indication that an employing office would be adversely affected if it were required to participate in mediation when requested by the claimant. Requiring mediation upon the request of a claimant will maximize the chances of achieving a voluntary settlement that best meets the needs of all parties to the dispute. Accordingly, the Board continues to recommend that the CAA be amended to provide that mediation be required if the claimant requests it.

Accountability through Action – The OCWR Strategic Plan

Just as congressional accountability to the American public is the cornerstone of the CAA, OCWR accountability to Congress and our oversight committees is the cornerstone of our new, five-year Strategic Plan for 2021—2126. The OCWR's overarching vision, as set forth in its Strategic Plan, is a respectful, safe, healthy, and accessible congressional workplace with equal employment opportunity and treatment for all. To achieve this vision, the Strategic Plan sets forth five mission-related goals supported by measurable performance indicators:

- Goal I: advance understanding of workplace rights and best practices through education and outreach to the congressional community.
- Goal II: promote a fair, safe, and accessible congressional workplace through efficient and effective enforcement of statutory rights.
- Goal III: foster productive collective bargaining relations in the legislative branch.
- Goal IV: optimize OCWR performance by developing and maintaining a highly motivated, talented, and satisfied workforce.
- Goal V: maximize use of evolving technologies and social media to advance OCWR goals and maintain security.

To accomplish each of these goals, the Strategic Plan sets forth numerous initiatives and action items. The Plan focuses on both external and internal areas of improvement. External efforts include increasing outreach and education to stakeholders including enhanced online training;

internal efforts include, among other initiatives, implementing critical information technology enhancements. All OCWR staff and Board members are important to these efforts. They are energized and determined to achieve the goals set forth in our Strategic Plan, which in turn will demonstrate our continued accountability to Congress in effecting the changes embodied in the Reform Act.

Implementing Reform through Education and Outreach

As mentioned, the first Goal in our Strategic Plan is to advance understanding of workplace rights and best practices through education and outreach to the congressional community. Indeed, among our Office's most significant responsibilities is its statutory mandate to provide a program to educate Members of Congress and legislative branch staff on their rights and responsibilities under the CAA. However, in the wake of the #MeToo movement, it has become apparent that education merely addressing the letter of the law is insufficient to transform the climate in the legislative community. Rather, for true change to occur, the congressional workforce must be educated on the underlying practices, biases, and behaviors that can lead to discrimination and create a hostile work environment. While our Office administers a vigorous Administrative Dispute Resolution program to enforce the laws made applicable to the legislative branch through the CAA, we strongly emphasize voluntary compliance through cooperation, training, and education.

Starting in 2019 and amid the growing call for a change in the congressional workplace climate, demand for OCWR training and outreach efforts markedly increased, with high demand for tools such as our bystander intervention interactive in-person courses and other online courses. With the onset of the pandemic, the OCWR quickly transitioned to the remote work environment, using web-conferencing tools to enable remote learning. In June 2020, the OCWR appointed two workplace rights specialists to train legislative branch staff on the provisions of the CAA and to promote best practices in the workplace. These specialists use video platforms to effectively conduct training for staff in Washington, D.C. and in state and district offices around the country.

As part of its efforts to ensure that the goals embodied in the CAA Reform Act were achieved in the congressional workplace, the OCWR created during the pandemic new training materials that promote civility in the workplace, including courses on recognizing and addressing implicit bias in the workplace. It also launched a course on promoting civil behavior, managing conflict, and supporting an inclusive workplace. Although the virtual education environment has presented challenges, it also has brought notable benefits, including convenient and easy scheduling, the option to record sessions for later use, and the use of survey features to obtain immediate feedback from participants to track the effectiveness of programming. Perhaps the

greatest benefit of the remote training is that it has enabled employees located in employing offices throughout the country to attend office-wide training sessions together despite the pandemic.

The OCWR also created and distributed newsletters, brochures, and fact sheets to inform staff of their workplace protections. The OCWR's website, ocwr.gov, serves as a readily available and highly effective resource for broad stakeholder engagement, and our office updates the site regularly. The website remains an important source of information for employees seeking to learn about their workplace rights and the process to resolve workplace disputes. Staff and other stakeholders may also visit the site to access our training catalog for courses on Recognizing and Preventing Discrimination and Harassment, Preventing Sexual Harassment in the Workplace, and Bystander Awareness.

The OCWR's Office of the General Counsel also conducts an ongoing Brown Bag Lunch Series, in person and via web conferencing, to share its expertise with legal counsel from the legislative branch on various substantive areas covered by the CAA. In 2020-21, all Brown Bag and Union Forum presentations were conducted virtually due to the pandemic. Brown Bag Lunches covered a variety of topics, including: paid parental leave legislation and guidance; other employee rights related to pregnancy, maternity, and parenthood; pandemic-related issues under the CAA; standards of causation in CAA litigation; a recap of employment law cases decided by the United States Supreme Court in its most recent term, developments under the OSHAct, and legal considerations associated with the return to the physical workplace.

The OCWR continues to provide information and training opportunities to the covered community, as these efforts are vital to ensuring true reform in the legislative community.

As a longstanding member of the Board of Directors of OCWR, I laud the work of our highly talented and motivated staff, who seek daily to achieve the strategic vision of our agency: a safe, respectful and accessible congressional workplace with equal employment opportunity for all. We are available to answer any questions or concerns that the Committee may have.