



**Testimony from Congressional Institute President Mark Strand
Submitted to the
U.S. House Committee on Administration**

Hearing: Oversight of Section 220 of the Congressional Accountability
Act: Implementing the Rights of Congressional Staff to Collectively
Bargain

March 2, 2022

Chair Lofgren, Ranking Member Davis and other Members of the Committee. Thank you for inviting me to testify on the issue of congressional staff unionization.

I am not against labor unions. I am the son of a union shop steward. And, as a former staffer who served in the House and Senate for 24 years, I am mindful of the often-challenging circumstances of being a congressional employee.

For the first hundred years of our government, there was no staff. We did not get to the current number of staff until the 1970s, following the work of a Joint Committee on congressional reform. I bring this up because citizens do not elect staff. They elect a single individual to represent them. Members of Congress are, consequently, given broad latitude to hire the staff they think will best serve their constituents.

For Congress to compete with the Executive Branch, it requires strong individual legislators. We empower Members to control the size and job duties of their staff based on the unique needs of their districts. Members are supposed to be the primary voice for their constituents in government. When we talk about earmark reform, for example, it is because we want to give Members a powerful and individual voice in how federal dollars are spent in their district.

The independence of each individual Member is key to the Article One powers invested in the Legislative Branch.

This is dramatically different from parliamentary systems where the Prime Minister is a member of the legislature. In our system, the President represents the Executive Branch with about 2 million employees and thousands of political appointees who help the President to conduct his agenda. In a parliamentary system, individual lawmakers tend to have just a few staffers - typically about three - and all other employees are either controlled by the political parties or are institutional and non-partisan.

Eighteen full-time staffers – the current limit for House offices – would be the envy of any lawmaker serving in a parliament. But the political parties in parliamentary systems control the majority of employees as a check against individual lawmakers showing independence from party leaders. It is true that partisanship has sometimes led the 21st Century Congress to behave like a parliament with its party-line votes, but this is a departure from tradition and history where Members have voted the interests of their districts above the interests of their party.

Our system of government was intentionally created to invest significant power in individual Members of Congress. To give up that independence would put Congress at an even greater disadvantage in the never-ending competition between the branches of government.

The essential problem with unionization is that union will share control over terms and conditions of employment with the elected representative that intersect at vital points with the ability of a Member to represent his constituents. The classic example is the right to discharge an employee. A lawmaker hires a legislative aide to assist with that Members' primary committee assignment. The aide performs adequately on most issues but develops a contentious relationship with committee staff, which, in turns, threatens the Member's ability to participate in the committee process. Is there just cause to discharge the employee and hire someone who can get along with committee staff and thereby ensure the Member's legislative agenda is achieved? How do you prove that in some kind of grievance procedure? Do you get affidavits from committee staff? What if, while that process is going on, the committee is passing a comprehensive reauthorization that won't occur again for another ten years? How will the Member explain to voters that internal staff disputes led to legislative failures but that Member still deserves to be re-elected?

What if the staff member performs their job functions well enough but makes a very poor impression on constituents – like a front desk person who has difficulty making people feel welcome? What if the scheduler makes periodic mistakes that embarrass the office with

double booking meetings or not factoring in travel times in the district? How many mistakes are enough to justify replacement?

Another mark against unionization is that Members would need to have uniform jobs from one office to another. Work conditions vary from week to week and even day to day, depending on the congressional and committee schedule. Sometimes the Washington staff puts in long hours, but when Congress is in recess, the Washington hours are more normal while district staff could be working six or seven days from early morning to late in the evening. These are the normal “feast or famine” hours of congressional staff. A feature of unionization is to create standard schedules, but how would that work for committee markups that can run many hours longer than expected and into the early morning hours? Would committee staff be able to walk off the job if a mark-up runs too long? Consider the impact that would have on the legislative process.

In congressional offices, a job title in one can mean something different in another. You can have caseworkers who also do outreach. You can have a staff assistant who also does legislative correspondence, but in another office, the staff assistant is a press assistant, and perhaps in another office, the intern coordinator and tours director. Some legislative assistants handle a single issue for committee work while others handle multiple issues. One of the practical problems is how do you negotiate union rules for staff whose titles mean different things in different offices for the specific purpose of best representing constituents on behalf of the elected Member. Different kinds of responsibilities might determine different pay rates for each of these employees.

In the Executive Branch, essentially all non-supervisory staff with some exceptions have the right to organize and collectively bargain. So, would most legislative assistants and committee staff be included in a congressional system under the Federal Labor Relations Authority similar to the regulations governing Executive Branch employees?

As Senator Robert Byrd pointed out in 1995, if there were employee unions on Capitol Hill, “Senators will no longer have the ability to structure and manage their staffs consistent with the unique needs of the States which they represent without first consulting with union representatives.”

Senator Byrd was known to champion the rights of union employees so his opposition should give pause to anyone wanting to form congressional staff unions.

There are other, practical considerations. What happens if such a union made political contributions against a Member of Congress whose staff were paying dues? What if only the staff of one party joined a union, and that party from time to time – as tends to happen – suddenly finds itself in the minority with no control over the agenda and schedule? Wouldn't that party be at a huge disadvantage during an important mark-up or Floor debate if the union rules prevent staffers from working past a certain number of hours? What if unions chose to target certain Members for grievances based on their party or their ideology while soft-peddling issues in the offices of party leaders or committees that have important jurisdiction over union rules? It's not far-fetched to think that union officials might play the process differently depending on the power or attitude of the Member on other issues. Would employees be allowed to sue unions for failing to represent them properly?

Could union actions slowdown the legislative process and even threaten to cause government shutdowns? After all, to gain benefits for their members unions need leverage. Autoworkers make cars. Legislative staff make legislation. The main leverage of a legislative staff union would be threatening the legislative process. What would happen if a union representing caseworkers decided on an action such as a work slowdown or a “sick out”? That's the potential control a congressional staff union could exert over how a Member represents their constituents. That would be intolerable.

No one elects congressional staff. They have no rights under our system of government to shape the legislative process in any way other than at the express direction of the elected

Member whose office they serve in. Deciding that direction is the job of the elected representatives.

I'm not saying that there aren't Members of Congress who do a poor job managing staff and that there aren't legitimate staff grievances. A good member of Congress sees their staff as their most important resource after their own time. A smart Member sets up a good management team that allows the staff to do great work on legislation, keep constituents informed of their actions, conduct outreach, and fight on behalf of constituents who have problems with Executive Branch agencies. This is the difference between a really good Member and an average one. Good staff exponentially increases the ability of a Member to do excellent work for constituents – both in terms of legislation and more district-focused activities.

Congress has made significant progress against the excesses of bad Members by preventing staff from being able to contribute to their bosses' campaigns, preventing age and racial discrimination, addressing sexual harassment, and providing training, assistance, and counseling to all levels of employees, including chiefs, district directors, and committee staff directors. It can do more, and the Select Committee on Modernization of Congress has been examining many of these issues. Congressional salaries are notoriously low, especially when compared to the private sector salaries senior staff can command. Passing the current fiscal year Legislative Appropriation bill would go a long way toward addressing some of that issue.

As a Capitol Hill staffer for nearly 24 years during which time I served in nearly every position you can hold except for the elected one, I can tell you that staffers do not do this job for the pay, the cushy hours, or the spacious offices. Like Members, staff also serve the public and swear an oath to defend and protect the Constitution. Much of that work can be quite rewarding and fulfilling, but we serve the country through the people's representatives - the elected Members of Congress. When we forget whose name is on the door, it is time to move on.

About a hundred of your colleagues, including some of you, began your time on Capitol Hill as staff. Jobs in Congress are not for everybody and attempts to unionize staff cannot change that. This work requires unselfish service and long hours with modest pay. This is as true for Members as it is for staff.

There are better ways to deal with the problems facing staff in the Congress than unionization. The right system is one where the Committee on House Administration, in collaboration with the Office of Workplace Rights and the Office of Employee Advocacy, does robust oversight to prevent abuses, like sexual harassment or bullying, but leaves discretion over judgment questions such as general hiring, pay levels, job responsibilities and titles, hours (to a reasonable extent), and the general direction of the office, among myriad other issues, to the Members themselves.

The Congressional Institute studies the internal operations of Congress and advocates for reforms that will make the institution more effective. I believe that steps to unionize would ultimately harm Congress and inhibit the work of elected representatives and threaten their independence. Thank you for inviting me to testify. I posed a lot of open questions that need to be answered before taking a single step more toward allowing employee unions among your staff. While we all have the same goal of making Congress a better place to work, we must be mindful of the potential conflicts of interest and unintended consequences – because once you start down that road, you might find it extremely difficult to turn back.