**Report of the Task Force Project on Congressional Reform**

Research Partnerships for Critical Issues

American Political Science Association

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In a moment of challenges for American political institutions, Congress remains the indispensable institution of pluralistic American governance. It is the one body that can represent the broad diversity of the vast American republic and forge complex compromises across competing and overlapping interests and values. This is the hard work of governing. It requires knowledge, skill, patience, and resources.

It is normal for journalists, representatives, and ordinary citizens to criticize the legislative branch's organization and performance. But there have been a handful of periods where concerns about Congress's ability to fulfill its role as a co-equal branch of governance have been particularly acute. We are in such a moment today. We cannot take for granted that the contemporary Congress will measure up to the challenges America faces.

As at earlier junctures, deep concerns about the state of Congress have sparked new efforts at reform. In January 2019, the House voted 418-12 to establish the Select Committee on the Modernization of Congress in response to a wave of doubts about how well Congress is serving the public and its own members.

Today's doubts about Congress are diverse: complaints about excessive polarization and gridlock are a common theme, as are concerns that Congress has not served as an adequate institutional check on the executive branch. Members have also worried that they lack the time and the incentive to invest in crafting legislation and conducting routine oversight of programs. Many also believe that Congress's failure to keep up with changes in communications technology have made it harder to engage with members' ever-growing constituencies. More generally, there is a widespread sense of job frustration among members in both parties: for many, the long hours and hectic schedules do not yield commensurate returns in concrete accomplishments.

This task force and its report stem from an American Political Science Association initiative launched by President Rogers Smith and the Task Force on New Partnerships. A key goal of the New Partnerships initiative is to encourage the engagement of the APSA with important public issues and debates, bringing our expertise as political scientists to bear in the public sphere in a nonpartisan way. It is important to emphasize that while our task force was created by APSA, the views expressed in this report are those of its members, and do not represent the views of the Association as an organization.

This mission – and our particular group – builds on an important precedent: APSA played a critical role in the landmark Legislative Reorganization Act of 1946. The APSA Committee on Congress – led by George Galloway, who then became lead staffer for the reorganization effort on Capitol Hill – helped shape the conversation that led to the adoption of a major reform that streamlined the congressional committee system, boosted staffing for committees, members, and support agencies, and marked the start of the professionalization of the legislative branch.

In forming this Task Force, APSA's intent was to assist Congress in its own stated ambitions to strengthen and reinvigorate itself to better carry out its representative and lawmaking functions. Lawmakers set forth their intentions in adopting the rules package at the start of the 116th Congress. In the design and scope of the reform efforts it launched, Congress made clear that its goals were explicitly nonpartisan in character. The Select Committee it created is made up of twelve members, six Democrats and six Republicans. To make recommendations, the Select Committee must obtain support from at least two-thirds of the committee's members.[1] The nonpartisan character of the Select Committee and its supermajority rules for issuing recommendations indicates that Congress intended any reforms adopted to be broadly consensual.

In authorizing the Select Committee, Congress explicitly identified a set of issues for special attention, including: improved rules and procedures, leadership development, staff recruitment and diversity, and technology and innovation. Furthermore, Congress specified that

[1] Title II of H. Res. 6, agreed to and passed in the House of Representatives, 418-12 (roll call number 12), January 4, 2019.

the Select Committee's work was to be conducted on an accelerated timeline with the committee expected to issue its report by December 2019.

APSA designed this task force to work in conjunction with Congress's own reform effort. Our task force placed special emphasis on the same topics referred to the Select Committee's attention in the rules package. We also adhered to the same accelerated one-year timeframe. The Task Force Project on Congressional Reform was convened in February 2019, and we deliberated about and developed our recommendations in tandem with the Select Committee's work.

In accord with the bipartisan character of the Select Committee, APSA brought together academic specialists on Congress with individuals from across the Washington, DC think tank and advocacy community. The goal was to represent the range of organizations involved in congressional reform issues, without respect to partisanship and ideology. The co-sponsorship of the R Street Institute and Brookings Institution provided critical support in reaching out to a diverse array of experts on Congress inside and outside the academy. Support for the task force was provided by the Ivywood Foundation and the William and Flora Hewlett Foundation.

Our work was rooted in a normative commitment to the value of Congress as a "transformational" legislature, co-equal to the executive branch in our system of government.[2] As political scientist Nelson Polsby observed several decades ago, most legislative bodies in advanced democracies are "arenas" that approve (or disapprove) executive proposals, but do not typically directly shape the content of laws. By contrast, the U.S. Congress has always been a "transformational" legislature: Congress routinely shapes both the general terms and specific content of legislation, regardless of whether a proposal is initiated by the President, a bureaucratic agency, an interest group, or rank-and-file member. In a large, diverse country, there is tremendous value in having representatives attentive to the interests and values of each state and locality intimately involved in shaping our laws.

For Congress to play the role of a transformational legislature, two basic requirements are information and leadership. Traditionally, the committee system has provided the access to specialized policy-expertise that has allowed Congress to craft laws rather than simply to ratify or reject executive proposals. At the same time, party leadership has been a source of coordination and priority-setting so that legislative outputs reflect more than a decentralized free-for-all among independent committees. At times, critics have worried that committees were too powerful, blocking the coordinated effort needed to tackle broad policy challenges that cross-cut their jurisdictions. At other times, critics have charged that parties are too strong, limiting Congress's ability to benefit from the expertise housed in committees. While we believe that the challenges for congressional capacity are currently particularly acute with respect to the institution's informational capacities, we proceed from the assumption that effective committees and party leaders are each necessary for Congress to retain its status as a transformational legislature.

[2] Nelson W. Polsby, "Legislatures," in *Handbook of Political Science*, Fred I. Greenstein and Nelson W. Polsby, eds. (New York: Addison-Wesley, 1975).

Our work was also informed by the baseline assumption that reform is a hard, complicated process in which one has to be attentive both to political incentives and to potential unintended consequences. If one started from scratch, it might be possible to design a more effective set of institutions to govern Congress. But one is rarely able to start from scratch, particularly in an institution that is hundreds of years old. Preexisting institutions create constituencies with a stake in their perpetuation. Changing one element may have ripple effects for other, longstanding institutions that have their own benefits. This does not mean reform is impossible or undesirable. But a key lesson of past reform efforts is that bold plans that are not attentive to the views of potential opponents tend not to get very far.

Our task force's work began with an agenda-setting meeting on March 8, 2019. Based on that discussion, we formed six subcommittees, focused on the problems discussed in the first meeting. These subcommittees examined: (1) congressional capacity; (2) staffing retention and diversity; (3) technology and innovation; (4) committee and floor procedures; (5) the congressional calendar; and (6) the appropriations and budget process. (See this report's Appendix for the membership of each subcommittee.)

Each of these subcommittees deliberated, compiled research, and exchanged drafts over the summer of 2019. Out of this work, each subcommittee prepared a report that included an analysis of the problems it was tasked with researching and an evaluation of proposed solutions. In several cases, the subcommittees did not reach a consensus on the merits of potential reforms. In those cases, the reports provided a detailed analysis of the underlying trade-offs involved for each proposal. Our belief is that a clear view of these trade-offs can inform the Modernization Committee's deliberations. Drawing on the work of these subcommittees, the task force then produced this report, which brings together into a single document the task force's evaluation of potential reforms.

This report is organized around the main challenges addressed by each subcommittee. For each challenge, we discuss potential solutions where there was a consensus among task force members. When there was no consensus, we focus on elaborating the competing considerations in evaluating particular proposals.

As detailed below, the main areas of consensus concerned ways to improve congressional capacity through increased personal and committee staffing, as well as expanded funding for existing support agencies and / or new support entities. Staff retention should also be encouraged with higher compensation, standardized benefits, and improved professionalization and training opportunities. We also had broad agreement on a range of initiatives to improve staff diversity. The task force also reached agreement on two reforms with respect to the budget process: eliminating floor votes on the debt limit and reinstituting earmarks. Finally, there was a consensus in favor of greater institutional attention to the evaluation and deployment of new technologies to enhance both constituent communications and Congress's internal operations.

On other issues, such as the relative balance of power between leaders, committees, and individual members, and the structure of the congressional calendar, the task force did not reach a consensus. This should not be a surprise: these are difficult, complicated issues in which there are competing political values at stake. While reforms may well be valuable in these areas, consensus within the task force proved elusive.

## Challenge: Congressional Capacity[3]

*The Problem*

Congress today is overwhelmed. After decades of self-imposed disinvestment in expertise and staffing, Congress lacks the resources and knowledge to stand on an equal footing either with the executive branch, or with the tens of thousands of lobbyists employed in Washington (many of whom are former staffers now earning multiples of their Capitol Hill pay). Congress today employs fewer staff aides than it did in the 1980s and early 1990s. Declines in staffing have been largest on committee staffs and at support agencies such as the Congressional Research Service and the Government Accountability Office, Congress's principal repositories of policy expertise. On issue after issue, Congress's available in-house expertise is inadequate to support fully-informed independent judgment of executive or lobbyist proposals, and certainly inadequate to lead in policy innovation.

*Potential solutions*

The task force is convinced that the House needs to invest in more staff capacity, especially by hiring more experienced and senior staff.

There are several mechanisms that could meet this need. As past attempts to reform and reorganize Congress have revealed, efforts to reallocate resources also become de facto efforts to reallocate power. Thus there are many important questions: Will additional resources be shared equally among representatives? Will some representatives gain more influence by virtue of their positions in party or committee leadership? How much will different resource allocations strengthen Congress as an institution vis-à-vis the executive branch or private lobbyists? What impact, if any, will different investments have on overall congressional capacity? We discuss several recommendations for improving congressional capacity through enhanced staffing, noting potential trade-offs with respect to the distribution of these resources.

*Recommendation 1: Personal Staff Budgets*

The Member Representational Allowance (MRA) should be increased and the cap on the number of staff employed in a member office should be lifted. In 2018, each member's office was allocated (on average) $1.37 million, which offices are free to spend as they wish; they could hire up to 18 permanent employees, along with four short-term or part-time additional employees.

Across-the-board MRA increases and removing the cap on the number of employees would give individual representatives the most discretion over how best to increase their own capacity. The obvious benefit of a straightforward across-the-board increase is that all representatives would benefit equally.

[3] The subcommittee on congressional capacity included Lee Drutman (chair), C. Lawrence Evans, David Hawkings (nonvoting), Bruce Patton, and Ruth Bloch Rubin.

Such an approach has a few drawbacks. One is representatives may use the money to hire more communications staffers to boost their public visibility, rather than hiring policy experts who would add to the institutional capacity of Congress. For many representatives, this would be a perfectly rational investment. Given the current top-down organization of the House, few representatives have meaningful opportunities to participate in substantive policymaking. Thus, an investment in policy expertise might seem a waste. But having more representatives each polishing their individual brands through social media and television seems unlikely to strengthen Congress as an institution.

Moreover, some representatives already do not take full advantage of their existing MRA, since representatives sometimes view the performative frugality of sending money back to the Treasury as good politics. Voting for a direct increase in their own staff may also appear to create a political vulnerability, by creating an issue for a future challenger.

A final concern is that increased staffing may distance members from one another, as staff-to-staff interactions replace member-to-member interactions. This, in turn, may make it less likely that enduring collaborative relationships will form among members. Members may end up spending more of their time managing their extensive staff "enterprises" and less time interacting with one another. While we see merit in this concern, we believe that it would greatly weaken the legislative branch to return to an institution which is primarily run through personal member-to-member relationships. Given the complexity and size of the national government – and the informational resources held by the executive branch and interest groups – members of Congress simply require extensive staff support in order to perform their jobs.

Despite these limitations, across-the-board MRA increases would be better than holding MRA budgets flat. At the very least, we would expect some offices to invest the money in increased salaries for key policymaking positions, and we expect that higher salaries would retain and attract more experienced and talented staffers.

We also note that the current MRA formula does not take into account cost-of-living in the member's district. Since members typically allocate their budget between district and DC staff, we believe that budgets should be adjusted by congressional district's cost of living.

Another adjustment to the MRA involves technology. It is possible to take technology expenses out of the MRA and create one House-wide shared services budget (see technology section). Though this is a modest accounting change, every dollar helps.

We also note that the House currently caps staff pay just below member pay, $174,000. We believe this is arbitrary, and members (and committees) should be allowed to pay more if they feel it is necessary to attract top talent.

*Recommendation 2: Boost Committee Staffing*

A second recommendation is to boost committee staffing. Since committee staff tend to have more experience and policy focus than individual member staff, an increase in committee staff would be more likely to improve overall institutional expertise. If committees had larger budgets, they could hire more experienced staff, who would support committees in informed

lawmaking and robust oversight. More resources should reduce staff turnover, allowing committees to benefit from institutional memory.

The task force recognizes that there are several potential approaches to adding committee staff, each with its particular tradeoffs. Key questions include: How much would staff be controlled by committee chairs? Would all committees get the same baseline budget increase? How much of these increases would go to subcommittees? And what would the partisan breakdown look like?

One possibility is to allocate some additional staff to both the committee chair and ranking minority party member. This would be consistent with the partisan basis by which staff are currently organized on most committees. One could argue that periods of effective committee-based policy-making have tended to have strong chairs and ranking members; by allocating more staff to these committee leaders, one would arguably make it more likely that committees serve as important power bases for making policy. A disadvantage of this approach, however, is that it would reinforce existing partisan divisions and would also continue to result in considerable turnover in staffing whenever majority control shifts. Our recommendation would be to set as much parity as possible between majority and minority staff to support maximal continuity in staffing. If staff expect to work together over a longer-term period, we might expect them to build more cross-partisan relationships than if they expect to be in a position for a few years and then move on.

An alternative to chair/ranking member control of staff is to allocate additional staff at the subcommittee level. This would give more representatives an opportunity to participate in the policymaking process and expand the ability of the House to tackle more issues simultaneously. The more diverse venues available for policy development, the more likely the House would develop innovative solutions and broker new coalitions for pressing public problems. Some might worry, however, that enhanced subcommittee influence will cut against the need for coordination.

A third approach to staffing would be for committees to hire nonpartisan staff, in the model of professional civil service employees who serve regardless of which party is in power. This model has often been proposed, including by the 1945 Joint Committee on the Organization of Congress, but never adopted, because committee leaders have wanted their own staff and many members have bristled at the idea of delegating control over staffing to an outside body of experts. Certainly, at times, various House committees in less partisan jurisdictions (e.g. Armed Services, Appropriations) have approached quasi non-partisanship, but Congress has resisted anything that smacks of a formal civil service system that might undercut members' discretion and flexibility. In an ideal world, nonpartisan expertise would provide a solid foundation for legislative and oversight activity. But we recognize that we are far from the ideal.

Still, incremental changes, such as having committee and subcommittee clerks hired jointly by the majority and minority, might save money and encourage bipartisanship (this model is followed in the Senate).

One potential approach to nonpartisan expert committee staff would be for each committee to establish something akin to an in-house think-tank, to serve only that committee. Committee

leaders would retain their partisan staff, and each committee would get additional nonpartisan expert staff to neutrally assist both Democrats and Republicans. An obvious challenge is whether, in a highly polarized Congress, neutral expertise is anywhere close to possible. A major practical challenge for all increases in staff would be the availability of office space.

Different approaches may work for different committees. A nonpartisan staffing model is more likely to work well for committees where issues are relatively consensual across parties; it is unlikely to work well where issues are highly polarized. The House may wish to experiment with different models for different committees.

But regardless of how the House wishes to expand staff capacity, putting more resources into committees has historically been the most effective way to increase institutional strength, since committees are the natural place for expertise and oversight. Though party leadership may view stronger committees as an institutional challenge, more powerful committees may help party leaders by giving them more sought-after positions to distribute and giving more members responsibilities to keep them busy. When many rank-and-file members have nowhere to direct their talents and energies, they can grow frustrated. A leadership structure with few positions of power to distribute can become weak and brittle.

*Recommendation 3: Expand existing support agencies for Congress and / or add new support entities.*

The Congressional Research Service (CRS), the Government Accountability Office (GAO) and the Congressional Budget Office (CBO) are valuable, trusted, independent resources for congressional offices. These institutions house experienced issue experts who have a long record of independent fact-based research. But, as with other sources of expertise, CRS and GAO, have suffered cuts over the last decades.[4] CBO's staffing has remained largely flat, despite intense institutional demand for its services. Given its resource constraints, CBO acknowledges that it generally does not have the staff resources to provide estimates in response to individual member requests.[5] Many also lament the demise of the Office of Technology Assessment (OTA), unfunded since 1995. OTA was a prestigious research group that advised Congress on technology policy.

One way to increase congressional capacity would be simply to expand the budgets of CRS, GAO, and CBO. With this money they could hire more researchers and experts to support Congress's knowledge capacity, and also do more work to make sure congressional offices understand how to take advantage of the resources and how these entities do their work. Congress could also revive the OTA — or, more likely, create a modern variation of it, one

[4] *Vital Statistics on Congress*, Brookings Institution, March 4, 2019, Table 5-8, https://www.brookings.edu/multi-chapter-report/vital-statistics-on-congress/.

[5] In *How the CBO Prepares Budget Estimates* (2012, 2), the agency explains: "Given CBO's staffing, it generally is not possible to satisfy requests for formal estimates that do not come from the budget committees, the committees of jurisdiction, or the leadership, but CBO's analysts work on requests from individual Members as time permits." See also Philip G. Joyce, *The Congressional Budget Office: Honest Numbers, Power, and Policymaking* (Washington, DC: Georgetown University Press, 2011),

targeted to members' current needs. Expanding these existing agencies, or perhaps creating some new specialized agencies in particular issue areas, would add general-use, neutral, fact-based expertise to Congress, equally available to all representatives.

We also note that the Office of the Legislative Counsel provides essential bill-drafting services to the House, and the more resources it has, the more reliably it can work with member offices to develop high-quality legislation. Like every other component piece of the legislative and policymaking infrastructure, the Office of the Legislative Counsel could benefit from a boost in resources.

In many respects, investing in support agencies would be the safest, least controversial way for Congress to expand its expertise. However, two caveats warrant emphasis.

First, while support agencies are valuable resources for Congress, staff and members may fail to put them to productive use. If inexperienced staff make inappropriate or highly partisan demands, or merely call upon support agencies to answer constituent questions, additional resources for support agencies will be largely wasted.

Second, to retain their reputations as neutral and nonpartisan, support agencies have grown more cautious. While they are still useful as sources of expertise, they typically hesitate to help with policy development, lest they be accused of being partisan or pushing a perspective. In polarized times, neutrality can be especially limiting. Some have accused CRS of becoming overly bureaucratic in order to preserve its perceived neutrality. However, we note that CRS remains a widely-trusted institution throughout Congress, and its new member retreats are highly regarded.

Given the wide range of issues on which Congress legislates, one possibility is to set up several smaller in-house congressional support agencies, on the model of the Office of Technology Assessment, to specialize in different issue areas. Given that different issue areas may each have their own culture and level of polarization, variety may be more sensible. Moreover, variety could allow different support agencies to experiment with different approaches and organizational structures, so that they can better learn what works and what doesn't.

A third, more radical idea is to create an in-house policy consulting service, with consultants available to individual representatives' offices or committees on a renewable 3-month basis. The consultants would advise on and develop policy in specific domains. As opposed to the just-the-facts CRS approach or a specific investigation task-oriented GAO approach, they would work with member offices and members more directly in making specific recommendations, and even engaging directly with outside interests and constituents. Basically, consultants would do anything a good staffer would do, helping members develop and pursue innovative new policy ideas.

Depending on the demands of the projects, consultants could work for multiple offices, they could accept or turn down office clients as they like. And the workflow should build in some flexibility for consultants to have "off" time in which they catch up on new developments in their

policy area and/or work on independent scholarship and reports. But if they are under-utilized for too long by member offices, they would eventually be let go.

The task force believes that each of these approaches could be used to improve nonpartisan staff capacity for Congress. The first approach is the lowest-risk option and would provide clear benefits. Experimenting with the creation of additional, smaller agencies may also be worthwhile for particular policy areas. The consulting service approach reflects a sharper break, with potential benefits but also risks. For example, the relative independence of staffers in the consulting model raises concerns about accountability relationships.

*Recommendation 4: Support for Member Organizations*

Another way in which the House could increase its capacity is to allocate more resources to Congressional Member Organizations (CMOs), more commonly known as caucuses. Currently, CMOs do not employ staff directly, but many representatives actively participate in caucuses, and devote some staff time to them. Caucuses are among the few spaces left for bipartisanship.

Committees have a more formal role in the political process, but the informal role that caucuses play may be an advantage in creating a less adversarial process of knowledge generation and developing bipartisan networks.[6] They are also a way for representatives to share staff on an ad-hoc basis. Whereas committee jurisdictions tend to be fixed and contentious because they drive the formal policymaking process, caucus jurisdictions can be flexible as issues arise, creating economies of scale for individual representatives who might not have the resources to hire a staffer to work on an emerging issue, but might join with a dozen others to hire two staffers to work with representatives who have shared priorities to develop legislation.

One straightforward proposal would be to give all representatives an annual CMO budget, which they could choose to allocate based on their interest and priorities. Congress could also restore the ability of representatives to devote a share of their MRAs (perhaps up to 10 percent) to CMOs.

If Congress wishes to incentivize bipartisanship, it could allocate additional funding for caucuses that meet a bipartisan threshold, available once individual member offices allocate their annual CMO budget. So, for example, any caucus that gets no more than 60 percent of its budget from one party would be entitled to a 20 percent bonus in funding.

The obvious challenge with shared staff is that members may not share staff well. However, the number of caucuses has been growing steadily in the House, from 56 in the 104th Congress (when they replaced Legislative Service Organizations) to 518 in the 115th Congress, suggesting representatives do find value in them.[7]

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[6] On potential for bipartisanship, see: Stuart M. Butler and Matthew Sommerfeld, "Could Caucuses Help Rebuild Bipartisanship on Capitol Hill?" Brookings Institution, February 9, 2017. https://www.brookings.edu/research/could-caucuses-help-rebuild-bipartisanship-on-capitol-hill.

[7] Sarah J. Eckman, "Congressional Member Organizations (CMOs) and Informal Member Groups: Their Purpose and Activities, History, and Formation." Congressional Research Service, 2019.

Another challenge is that a more developed caucus system could be seen as contributing to more fragmentation in Congress. Because these caucuses have no formal authority structure (other than whatever internal rules they agree on), they could develop into free-floating entities with no clear accountability. Certainly, the House could agree on rules to prevent caucuses from getting too big, such as budget, staffing, or even membership caps.

*Increased Leadership Staff: Drawbacks Caution Against this Solution*

Another approach acknowledges the reality that Congress is currently a centralized institution, and party leaders play a critical role in policy development. One point of view contends that in these polarized times congressional parties have essentially become parliamentary parties. Even short of such a sweeping generalization, there is no question that much policy is brokered in leadership offices, with party leaders serving as principal actors in negotiating agreements across chambers and between Congress and the president. In their capacity as central policy brokers, leaders need to have expert staff resources to do their work well.

Increasing leadership staffing, however, faces two obstacles. First, it is unlikely that most representatives would support more putting resources in even fewer hands, voluntarily reducing their power even further. Second, party leadership offices may not invest those resources in policy capacity. Leadership staff is the only area where resources have grown over the past three decades, and many of the additional staff roles have been devoted to communications, not policy expertise.

If the pressing concern is Congress's declining expertise and institutional knowledge, locating additional staff in partisan leadership offices is unlikely to be the most effective way to improve the situation. Rather than housing additional staff directly in leadership offices, we recommend instead that leaders rely upon relevant expertise from strengthened committee staffs as needed to handle policy issues in particular areas.

However, given that the more polarized times may demand a more centralized leadership, we support adding policy expertise wherever the current politics allow for it to be added. Adding resources to member offices, committees, leadership, or all three equally are all improvements over the status quo. To reiterate, the core problem is that the House does not have adequate expertise and staffing, given its responsibilities and the information environment it inhabits. While there are many ways to add resources, any approach is better than doing nothing.

*Congressional Capacity: Summary Thoughts*

By sheer math, even doubling the money spent on Congress would be tiny compared to the overall federal budget. The 2018 federal budget included $2.1 billion to fund the House ($1.2 billion) and the Senate ($919 million).[8] That's 0.05 percent of a $4.1 trillion total federal budget.

[8] Ida A Brudnick, "Legislative Branch: FY2018 Appropriations," Congressional Research Service, 2018, 37.

Nonetheless, members have long feared the political consequences of voting in favor of increased spending on their own institution. While both parties could conceivably agree to support increases, this would not inoculate incumbents from primary challengers, who might make a political issue out of any spending increase.

But reform politics are ultimately what representatives themselves make of it. A grassroots movement demanding more public spending on Congress is unlikely to be forthcoming. But Americans do want a functional, productive Congress. And if individual representatives do not defend the institution, who will? Understandably, the tenor of the times is to bash Congress and government institutions. But as any parent understands, endless shaming and self-flagellation is counter-productive. For Congress to realize its potential as a governing institution, we need to invest in its full development.

We recognize that adding capacity, however it is achieved, cannot necessarily solve larger problems of congressional polarization, which have contributed to a gridlocked Congress. And while we believe that, on the margins, more expertise and more long-term staff will contribute to a more institutionalist view (as opposed to short-termers who see Congress as a stepping stone to higher salaries off Capitol Hill), we are not under any illusions that Congress's problems can be solved by more capacity alone. And as we've noted, even choices on where to locate additional capacity cannot be separated from larger questions about who has power within Congress.

We believe that adding capacity directly to committees is most likely to both increase substantive policy expertise and offer some potential opportunity for reducing polarization by creating more potential venues for unexpected bipartisan coalitions. We also encourage the House to explore and experiment with a mix of alternative arrangements we have suggested.

## Challenge: Staffing Retention and Diversity[9]

*The Problem*

Congressional aides are members' primary institutional resource, and members rely on them heavily to execute the many and varied functions of their duties as elected officials. From constituent casework to drafting and advancing legislative proposals, congressional staff are vital to each individual member and to Congress as an institution. Efforts to improve congressional capacity ultimately depend on the quality of staff.

Congress benefits from the work of many talented staffers who are dedicated to the institution, its members, and its mission to represent the interests of constituents. Yet despite their acknowledged importance and influence, congressional staffers operate in a work environment in need of modernization. As a whole, the corps of congressional staff lacks diversity, particularly in more senior-level positions. More generally, Congress has difficulty recruiting, retaining, and training effective congressional staff. Due to a combination of strenuous work demands, low and stagnant pay, and a lack of professional development

[9] The subcommittee on staff retention and diversity included Kathryn Pearson (chair), Casey Burgat, Menna Demessie, Bernard Fraga, Tracy Sulkin, Michele Swers, and Vanessa Tyson.

opportunities, congressional staff commonly use service in Congress as a stepping stone to outside employment.

We recognize that every member's office has some degree of autonomy, and member offices differ according to individual member goals, priorities, and organizational style. Nonetheless, by modernizing its human resource operations and improving staff compensation and professional development programming, Congress can reestablish itself as a desired place of employment, where talented professionals build long-term careers, instead of one that is seen by many young people as a place to open doors to better opportunities down the road. Moreover, many of the reforms we propose would actually save members and their offices time because they streamline many human resources functions rather than leaving these functions to individual offices to figure out and implement.

*Recommendation 1: Improve the collection and dissemination of data on the compensation and demographic breakdown of congressional staff.*

In order to gauge current problems and track progress in staff retention and diversity over time, Congress and those who care about the institution need better information about staffing practices. We recommend that Congress require systematic information collection. Information availability would then allow Congress to identify where the institution falls short in equitable opportunities for staff career advancement.

To achieve this goal, Congress can simply build upon existing hiring processes. Specifically, offices currently complete a Payroll Authorization Form (PAF) when each hire is made and submit a mandated monthly verification of payroll data for all current staffers. At present, this information is submitted to the Office of Payroll and Benefits, which then compiles it into quarterly reports that are provided to the public. We recommend, first, that in addition to filling out the Payroll Authorization Form, new staffers and those changing positions also fill out a form that includes basic demographic questions about race/ethnicity/gender (following established EEOC mandates), as well as questions about education and experience. Data for each individual staff member should be tracked via a unique identifier, and the information contained on this questionnaire should be submitted to the Chief Administrative Officer of the House. Interns and fellows should be included in this process, even if their funding is derived from a separate source. As the program launches, current staff should also be asked to complete the form described above, and to do so expeditiously. These staff-level demographic data should be made publicly available, in a machine-readable format, on the Chief Administrative Office website.

We propose that the Chief Administrative Officer of the House produce and submit to the Committee on Appropriations of the House of Representatives an annual report that reviews the salaries and benefits of DC and district office and committee staff in the House of Representatives to evaluate 1) the racial/ethnic and gender breakdown of each position in the House and in each member's office, disaggregated by the district and DC offices, 2) whether staff across offices and demographic categories receive similar pay for similar work, and 3) if there is a disjuncture, the extent and nature of that disjuncture, broken out by job responsibilities.

*Recommendation 2: Increase workplace diversity*

Cultivating a workforce that reflects the diversity of the nation along multiple dimensions including gender, race, ethnicity, region, and economic background is fundamental to achieving representation of constituent views. More diverse workplaces better reflect the needs of a heterogeneous society and achieve better outcomes. Achieving a more diverse workplace must start with recruitment, and the task force offers several recommendations to help expand the candidate pool to provide offices with a path to recruiting a highly qualified and more broadly representative workforce.

In 2019, the House established the Office of Diversity and Inclusion. We recommend that Congress strengthen and expand the role of this office. Doing so would involve placing it outside of party leadership offices and within the House Chief Administrative Office (CAO) that serves the 10,000 House members, officers, and staff. The Office of Diversity must be a nonpartisan and permanent office, insulated from partisan politics and inconsistent budget appropriations. Relegating workplace diversity initiatives to one party's leadership offices is not sustainable or best suited to increasing workforce diversity. Moreover, to be successful the House must provide the Office on Diversity and Inclusion with consistent institutional support and resources according to best practices in Human Resources and the private sector.

The responsibilities for the office should include maintaining a public website with information about their diversity plan and evaluations of diversity efforts, publicizing information about internship and fellowship programs for underrepresented communities, and conducting regular outreach to Minority Serving Institutions (MSIs), Historically Black Colleges and Universities (HBCUs), Hispanic Serving Institutions (HSIs), Asian Pacific American Institute for Congressional Studies (APAIs), American Indian Higher Education Consortium (AIHEC) members, and other universities and colleges across the country to promote internships and jobs on Capitol Hill. The office should also partner with organizations that have a proven track record of identifying, promoting, and supporting diverse staffers, including relevant caucuses and Congressional Member Organizations.

Workplace diversity can also be enhanced by increasing access to congressional employment opportunities by modernizing job listings and resume banks. As part of the House Vacancy Announcement and Placement Service, we recommend that all job opportunities are posted online through https://www.house.gov/employment.

We recommend that the House Vacancy Announcement and Placement Service should maintain a searchable resume database with information on job seekers. This database would be open to all interested job candidates and would provide self-reported voluntary information regarding the demographic characteristics of job seekers, including (but not limited to) party, race, ethnicity, sex, veteran status, LGBTQ status, disability status, and state of residence. This database will be accessible to congressional staff with hiring responsibilities and to the Office of Diversity and Inclusion. We also recommend that the Office of Diversity and Inclusion, in coordination with the House Vacancy Announcement and Placement Service, hold information sessions about employment opportunities in the House of Representatives and post recorded versions of these sessions online.

*Recommendation 3: Staff Retention through Better Compensation*

The top reason given by congressional staff for why they depart Congress is low pay.[10] For several decades, Congress has offered stagnant and uncompetitive salaries to its aides, particularly when compared with compensation levels for equivalent positions in the private sector. The effects of such low wages are compounded given that D.C.-based congressional aides live in one of the most expensive metropolitan areas in the country and are increasingly likely to come to Congress owing large amounts in student loans. As a result, Congress has struggled to retain qualified and effective staff. Staffers regularly depart Congress after short tenures, trading their congressional experience and connections for higher salaries offered by special interest and lobbying organizations. To combat this revolving door and to increase retention among its aides, we recommend that Congress increase congressional staff salaries. This should be coupled with an increase in the MRA (discussed above).

Relatedly, because of the discretion afforded members of Congress in how to run their own offices, each congressional office is markedly different in the types and amounts of non-salary benefits offered to staff. Some offices offer student loan repayment assistance, some don't; some offer regular sick leave, some don't. These office-by-office differences result in inconsistent compensation combinations that leave staff unaware of and uncertain about their non-salary compensation packages. We recommend standardizing such benefits across congressional offices to allow staff to better understand and anticipate their compensation, and to provide more flexibility to staff to choose employment in different offices knowing that minimum benefit packages will be offered in each.

*Recommendation 4: Advancement/Professionalization Training*

A highly-trained staff benefits the institution and also increases the satisfaction of individual staffers. A well-developed training program would offer education in the legislative process and constituent work and would help staffers to learn about careers on Capitol Hill and envision a longer tenure on the Hill.

The first challenge is ensuring that all staff have sufficient training to excel in their positions. The Congressional Research Service provides excellent, nonpartisan legislative training. However, not enough staff take advantage of it, perhaps because they do not have the time, they do not know about it, or because members of Congress do not value it and either subtly or actively discourage their staff from taking advantage of it. We propose two types of mandatory training for all new staffers—at least two sessions of in-person CRS legislative training and on-line training in constituent service, with different modules for DC and district offices. Current staff who have not completed this level of training should be encouraged to do so. This may require an increase in the CRS budget so that it can offer more in-person sessions and also create and produce on-line training.

In addition to training for permanent staffers, we recommend that interns and fellows also receive training that details House operations and typical intern responsibilities and opportunities. There are economies of scale to offering this at the level of the institution rather than office-by-office.

[10] Congressional Management Foundation, *Life in Congress: Job Satisfaction and Engagement of House and Senate Staff*, 2013.

A second challenge in recruiting and retaining staff relates to professional development. Importantly, on this dimension, the needs of congressional staffers are not unique. Professionals in all fields benefit from opportunities to gain new skills and hone existing ones, to network with and learn from peers, and to understand the structure of the career ladder within their organizations. In turn, employers who provide robust professional development programs enjoy highly-trained staff members who are more satisfied with their jobs and more likely to stay with their current organization. Thus, in addition to training to effectively onboard new staff in the legislative process and in work with constituents, it is important to offer ongoing opportunities and, perhaps a structured program, for more experienced staffers. Such programming would support the mentoring and career advice offered within individual member and committee offices.

We propose creating a more robust on-going professional development program for current staff, including regular "Life on the Hill" events that would offer a mix of speaker series where panelists discuss Hill-specific advancement and networking events. It is important to cooperate and coordinate with other groups that are already involved in such programming.

*Recommendation 5: Staff management and workplace climate*

Office management and office culture vary considerably between individual members' offices. While best practices in HR and management are followed in many offices, in some offices, poor performance in these areas come at a significant cost to members and the institution. Indeed, the second most significant reason that staff report leaving the Hill relates to frustrations with the management of their office.[11] Poor management is rarely intentional; many staff in supervisory roles have not had sufficient experience or training to effectively manage and motivate other staffers, and many staff are not even aware of their rights as employees. It is important to ensure a basic minimum level of uniform human resources training for staff and additional training for managers in House offices. We propose that all members of Congress receive identical office handbooks detailing these rights as well.

We propose that Congress institute two new types of mandatory training, including: 1) In-person human resources information sessions for staff located in DC, and online training for district staff, to ensure that they know their rights, benefits, and responsibilities, and 2) in-person management training for staff in supervisory roles, including Chiefs of Staff and District Directors. Topics in both trainings should include sexual harassment and discrimination prevention, promoting diversity and inclusion, employee rights and benefits (as detailed in the CAA), and ethics rules. Training for Chiefs of Staff and District Directors should also include management training on issues such as navigating the congressional and district work schedule, conducting effective annual reviews, dealing with performance issues, cultural competency, and motivating staff.

We also recommend that orientations for newly elected members include a module related to managing staff, including training on supervising, evaluating, and motivating

[11] Congressional Management Foundation, *Life in Congress: Job Satisfaction and Engagement of House and Senate Staff*, 2013.

employees; cultural competency; promoting diversity and inclusion; and preventing sexual harassment.

Finally, we recommend establishing an anonymous staff hotline to enable staff to report problematic office environments or management practices. In addition, the Office of Congressional Workplace Rights could administer an anonymous exit survey to staff leaving or switching offices addressing office climate and work conditions.

*Staffing Diversity and Retention: Summary Thoughts*

The job of congressional staffer has long featured long hours and relatively low pay. Yet maintaining Congress's policy-making capacity and co-equal role depends on attracting and retaining individuals with professional expertise and a long-term commitment to their jobs. In providing greater protections and clearer career pathways for staff, it is important to keep in mind that congressional staff occupy a peculiar position in our political system. Congressional staff are paid by taxpayers, and taxpayers have a right to demand that staff employed at their expense be managed well and treated fairly. Yet congressional staff are also political actors, subject to political accountability to the members they serve. Members are fundamentally independent actors as they exercise political leadership. This does not mean that general rules concerning the treatment of staff cannot be designed, but these rules must avoid creating excessive bureaucratic machinery that undermines individual members' ability to rely on staff to help exercise their myriad roles in our political system. By attending seriously to questions of staff diversity, retention, and professionalization, while balancing concern with member independence and autonomy, Congress can enhance its ability to perform its lawmaking and oversight functions.

## Challenge: The Budget and Appropriations Process[12]

*The Problem*

As codified in the Congressional Budget and Impoundment Control Act of 1974, budgeting and appropriating should unfold this way. The president initiates the process by presenting a budget request for the following fiscal year on or before the first Monday in February. The House and Senate then adopt a budget resolution that contain spending allocations for each committee, known as 302(a) allocations. Following adoption of the budget resolution, the Appropriations Committee divides its allocation among its subcommittees (known as 302(b) allocations) to generate a dozen appropriations bills. These bills, once adopted in committee and sent to the chamber floors, contain only appropriations, and House and Senate conferees iron out any differences in their respective appropriations bills in conference. After both chambers agree to each conference report, the president signs each appropriations bill into law before the beginning of the fiscal year on October 1.

[12] The subcommittee on budget and appropriations process included Nolan McCarty (chair), Sarah Binder, Josh Chafetz, Meredith McGehee, Mark Strand, and Bruce Patton.

Over the past several years, the process is best described as "Regular Disorder." The president often misses the early February target for his budget request. With increasing frequency, the House and Senate fail to adopt a budget resolution. Over the past decade, few appropriations bills have been signed into law before the beginning of the fiscal year, and some never make it the floor. More commonly, Congress and the president use continuing resolutions (CRs) to fund governmental activities for many months. Occasionally, CRs provide all federal spending for an entire year. When appropriations bills do pass, they are often packaged together as omnibus bills that are negotiated by party leaders and the president, thus circumventing the involvement of the appropriations committees. These omnibus bills have increasingly become vehicles for legislative initiatives unrelated to appropriations. And finally, as we have recently witnessed, the regular disorder can morph into extended shutdowns of major portions of the federal government.

Delays in the passage of appropriations bills and the resulting "governing by CR" has drawn wide concern. Late appropriations bills create budgetary uncertainty for government agencies and private actors, reduce the ability to adjust to new spending priorities, undermine the role of committee expertise, and weaken fiscal governance.[13] Shutdowns and continuing resolutions also have several negative consequences on government operations, the federal workforce, and the economy.[14]

An additional set of problems arises from shifts in power within the House and Senate that have accompanied the breakdown in the appropriations process. Relative power has shifted from committees to parties, as party leaders have centralized authority over the spending process at the expense of Appropriations committee and subcommittee chairs and rank-and-file members. Legislative compromises now tend to be orchestrated by leadership and their staff, limiting the influence of rank-and-file members in the legislative process.

The task force subcommittee on Appropriations report provides detailed data documenting the breakdown of the budget process, highlighting the failure to adopt budget resolutions and the heavy reliance on omnibus bills and continuing resolutions.

*Potential solutions*

The task force considered a range of proposed reforms to the appropriations process. We reached a general consensus in favor of two proposals. In three other cases, also described below,

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[13] See Joseph White "The Continuing Resolution: A Crazy Way to Govern?" *The Brookings Review* 6.3 (1988): 28-35; Neal E. Devins, "Appropriations *Redux*: A Critical Look at the Fiscal Year 1988 Continuing Resolution." *Duke Law Journal* (April 1988) 389-421; and Peter Hanson, "Abandoning the Regular Order: Majority Party Influence on Appropriations in the United States Senate" *Political Research Quarterly* 67.3 (September 2014): 519-532.

[14] References regarding shutdowns in this paragraph are derived from Clinton T. Brass et al, "Shutdown of the Federal Government: Causes, Processes, and Effects," CRS Report RL34680, Updated December 10, 2018, available at https://fas.org/sgp/crs/misc/RL34680.pdf.

task force members see both promise and concerns, and we therefore describe these trade-offs without reaching a definitive conclusion.

*Recommendation 1: Eliminate floor votes on the debt ceiling.*

Since the 1930s, Congress has used a government-wide debt limit to avoid having to pass a law authorizing each individual bond issue. Beyond this limit, the issuance of additional government debt is illegal. While committee members generally agree that the abuses of this procedure described below warrant reform, we vary in the extent to which we would like to reform the debt ceiling. One viewpoint argues that eliminating the debt ceiling would be an abdication of Congress's constitutional responsibility of issuing debt, while the other point of view argues that Congress may delegate the authority to the Treasury to borrow funds as needed by statute.

While Congress is constitutionally responsible for controlling the national debt, there are several procedural options to reform the debt ceiling in its current form. One approach would be to suspend the debt ceiling, either temporarily or permanently. Congress has used this procedure in recent years for a fixed period of time. Procedurally, once a temporary suspension ends, the debt limit is re-established at a level that accommodates spending during the suspension period.[15] Temporary suspensions would have the benefits of delegating to Treasury but would make it easier for Congress to reverse that discretion at the end of any suspension.[16] Of course, temporary suspensions would still require the regular congressional action that often leads to legislative brinksmanship. But at least the dates for action will be more predictable than the current system where the timing of debt limit increases are dictated by the uncertain processes of debt accumulation.

A second approach would be to return to the "McConnell Rule," by which Congress would authorize the president to make specified increases of the debt limit, subject to expedited, filibuster-proof votes of congressional disapproval. Unless Congress voted to override a likely presidential veto of a disapproval resolution, the debt limit would increase.

The advantages of eliminating the debt ceiling in its current form are straightforward.[17] The debt ceiling creates opportunities for political brinksmanship with little evidence that it provides any fiscal constraint. The policy decisions that result in debt are made when Congress passes laws related to taxes, discretionary appropriations, and mandatory programs, and the level

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[15]Congressional procedures to suspend the debt ceiling have been in place for decades. From 1979 to 2011 in the House, following passage of a budget resolution by the House and Senate, the "Gephardt Rule" required the House clerk to automatically engross and transmit to the Senate a joint resolution suspending the debt limit for that fiscal year. Although the Senate had no similar rule, the chamber often took up these House-passed bills to raise the debt ceiling.

[16] A permanent suspension could presumably be only reversed by new legislation requiring the president's signature or a veto override.

[17] For more information on reforming the debt ceiling, see Kevin Kosar and Philip Wallach, "R Sheet on the Debt Ceiling," July 2018, available at https://www.rstreet.org/wp-content/uploads/2018/07/Final-Debt-Ceiling-R-Sheet.pdf.

of debt incurred follows downstream from these policy choices. By effectively eliminating the debt ceiling, Congress would minimize the chance of crises. Failure to raise the debt ceiling could lead to a situation in which the U.S. Treasury is unable to raise sufficient funds to make all payments due, which most market observers agree would have disastrous economic effects.

The disadvantages of eliminating the debt ceiling in its current form, critics would argue, are two-fold. First, it would take away an opportunity for legislators to consider the cumulative consequences of their individual policy decisions. Second, it could be considered an abdication of Congress's constitutional responsibility for controlling the national debt. Members of the task force agree that the advantages here outweigh the disadvantages. We recommend eliminating the current practice of raising the debt limit through floor votes in Congress.

*Recommendation 2: Lift the ban on earmarks*

This proposal would remove the legislative ban on congressionally directed spending items and re-institute the practice of earmarking. House and Senate rules define an earmark as any congressionally directed spending item, tax benefit, or tariff benefit that would benefit a specific entity, state, locality, or congressional direct that is promoted primarily at the request of a member. Procedurally, the current earmark ban references a 2011 House rule that prohibits legislation containing an earmark. The Senate also has a rule pertaining to earmarks, but it only requires a pecuniary interest statement from the earmark's sponsoring member if legislation containing an earmark is considered. Anecdotally, there is considerable support among members to restore earmarking.

There are two areas of disagreement regarding this proposal. The first concerns whether earmarks should be permitted or prohibited in legislation. Supporters argue that earmarks grease the gears of legislative deliberation by giving lawmakers specific projects to support in appropriations bills – benefits that have a high traceability to their constituents. They also argue that legislators know the needs of their districts better than executive branch officials. In addition, supporters note that eliminating earmarks has neither reduced overall spending nor eliminated political decision making. Instead, the ban has only shifted power to the executive branch, since project-level decisions now get made by agency bureaucrats rather than by legislators. President Trump has suggested that Democrats and Republicans should re-consider the earmark ban to make it easier to pass legislation.

Critics of earmarks argue that, at the time they were banned, earmarks were systematically abused with little or no vetting of their interest to taxpayers. They erupted in high-profile corruption scandals and promoted unnecessary spending. In addition, the inclusion of earmarks in appropriations bills would not necessarily increase member support of appropriations bills, as the inclusion of earmarks may cause members who are ideologically opposed to the practice to vote against bills they would otherwise support.

The second area of disagreement concerns the conditions under which earmarks should be permitted. One such condition is whether earmarks should be authorized before they can be appropriated. Supporters of authorized earmarks argue that projects would receive more vetting if they were both authorized and appropriated. In addition, requiring earmarks to be authorized might incentivize the passage of more authorization bills. Opponents argue that requiring

earmarks be authorized might delay appropriations bills and further undermine the appropriations process, since authorization bills would need to be passed before appropriations bills could be considered. If authorizing committees did not pass their own bills, then project authorizations might be carried in the annual appropriations bills themselves, which might further undermine the work of authorizing committees. In addition, critics of an authorization requirement note that the authorization process may not necessarily lead to additional project vetting, as evidenced by the proposed Gravina Island Bridge, more commonly known as "The Bridge to Nowhere," which was approved in a highway authorization bill.[18] Other conditions include levels of transparency, limiting the types of recipients that may receive funding, and requiring equity of distribution of earmarks. We recommend ending the ban on congressionally directed spending items, but we are divided on the requirement for earmarks to be authorized before they can be appropriated.

*Potential reform: Create an automatic continuing resolution (CR)*

This proposal would institute a stopgap continuing resolution should Congress and the president fail to enact into law one or more of the appropriations bills by the start of the fiscal year, an approach currently instituted in Germany. The primary benefit of the automatic CR is that it would eliminate the possibility of future government shutdowns. Details on the automatic CR proposals vary by length and whether they would include across-the-board cuts to incentivize cooperation on a full-year bill. Reform proposals in this vein usually take the form of making available *x* percentage of the prior year's funding. More complicated proposals reduce *x* as appropriations delays become longer.

However, the automatic CR also has drawbacks, of which we highlight three. First, an automatic CR would transfer power from the legislative branch to the executive branch. It does so in two ways. One, an automatic CR shifts the baseline consequences of inaction from a lapse in appropriations to *x* percentage of the prior year's funding. Assuming that *x* is preferable to the president than a lapse in appropriations, then the president has less incentive to make policy concessions through the regular appropriations process. In this way, an automatic CR might undermine inter-branch policy negotiation at precisely the moment when Congress has the most leverage.[19]

Second, an automatic CR might lead Congress to give the executive greater authority to transfer funds among programs. Budget priorities change from year to year. Providing funding at the previous year's level may not be responsive to changes in needs. To address this, Congress could give agency officials additional authority to shift funds where they are needed. However, doing so would create moral hazard problems, as agency officials could use this additional authority to implement their own policy preferences. Indeed, this is one explanation for why

[18] For more information on The Bridge to Nowhere, see ProPublica "'Bridge to Nowhere' Timeline", September 24, 2008, available at https://www.propublica.org/article/bridge-to-nowhere-timeline.

[19] See Josh Chafetz, *Congress's Constitution: Legislative Authority and the Separation of Powers* (New Haven: Yale University Press, 2017), 61-77.

Congress historically has carried language in CRs prohibiting the initiation of new programs or the termination of existing programs during a CR's coverage period. Increasing transfer authority under an automatic CR would make governing by continuing resolution more attractive to the executive, thereby discouraging the White House from compromising on spending bills. Members of the task force acknowledge the trade-off between efficiency and the balance of power, and if this reform were to be adopted, we recommend that it be accompanied with greater checks on executive power such as strengthened prohibitions against reprogramming money during a CR.

Third, choosing the correct percentage of last year's spending *x* is a difficult, but important problem in any automatic CR mechanism. Setting *x* too high might create a pro-spending bias and make it difficult to reduce funding levels. Alternatively setting *x* too low may lead to large funding reductions if Congress and the president cannot agree on new appropriations. It is possible, however, that a low value could encourage appropriators to support higher levels of spending once the consequences of reducing spending were made plain.[20] It is tough to predict how the setting of *x* would favor one party strategically. For example, any *x* less than 100% might have a conservative bias, albeit this would not seem to hold for defense funding. But as suggested above, formal models of bargaining might suggest that an *x* low enough could generate a progressive bias. What's more, it is difficult to predict how the setting of *x* would interact with party goals.

One might also argue that an automatic CR would treat the symptom and not the underlying problems that generate stalemate over funding in the first place, which may be partisan or ideological in nature. Although shutdowns are undesirable, the threat of a looming shutdown is often sufficient to get legislators to the negotiating table to agree to a compromise. Removing this threat might make future disagreements over funding more likely, not less likely, particularly if one party risks shouldering the blame for causing a shutdown more than the other. As a result of these tradeoffs, the committee is divided on the proposal to create an automatic continuing resolution.

*Potential reform: Establish a biennial budgeting cycle.*

This proposal would reform the annual budget and appropriations processes into a two-year cycle. There is some bipartisan support for biennial budgeting (e.g., Isakson-Shaheen bill), and every president between Reagan and Obama has supported this reform. There are two major versions of this proposal. The first is a biennial budget resolution with annual appropriations, and the second is a biennial budget resolution with biennial appropriations. In its report, the subcommittee discusses each proposal below but remains unconvinced as to how effective either would be in preventing CRs and/or government shutdowns.

*Potential reform: Phase out funding for programs with unauthorized appropriations.*

[20] The logic of how an agenda setter can exploit undesirable status quos to obtain greater levels of spending was first explicated by Thomas Romer and Howard Rosenthal. "Political Resource Allocation, Controlled Agendas, and the Status Quo. *Public Choice* 33.4 (1978): 27-43.

This proposal is aimed at more strictly enforcing a House rule that discourages appropriations for programs that do not also have an authorization of appropriations. According to the Congressional Budget Office, Congress appropriated $307 billion to nearly 1000 programs and activities in fiscal year 2019 that lacked an authorization of appropriations, or roughly one-quarter of the discretionary federal budget.[21] Most versions of this proposal would create a mechanism that incentivizes congressional committees to keep authorization of appropriations current for programs within their jurisdiction. Programs with unauthorized appropriations would see their budgets reduced by a certain percentage each year, and if appropriations are not authorized after a fixed period of time, the program would be terminated completely. A version of this proposal (U.S.A. Act) has been introduced by Rep. Cathy McMorris Rodgers (R-WA) in the House.[22]

Proponents argue that new procedural mechanisms, like those proposed in the U.S.A. Act would make more efficient use of taxpayer funds and would increase legislative oversight of the executive.[23] This reform would restore the authorization process by incentivizing authorizing committees to review and revise government programs more regularly, or else eliminate those programs. Proponents also argue that the threat of automatic spending cuts would force authorizing committees to be more active in the legislative process. Opponents argue that the proposal abuses the term "unauthorized" and greatly exaggerates the problem.[24] The "unauthorized" here refers to the authorization of appropriations, which refers to internal congressional procedure that divides legislative responsibilities between the authorizing and appropriations committees and is separate from the extensive authorizing law that spells out an agency's functions, powers, and limitations. Consequently, the term "unauthorized" as used in the proposal does not signify programs that are continuing past their intended termination date or that Congress intends to shut down. Opponents also argue that the proposed cure here is far worse than the disease. By requiring that programs be authorized regularly or face automatic budget cuts, this proposal would further encumber the legislative process by creating more "must pass" deadlines and funding cliffs. They also argue it would do so with a conservative bias, since legislators who favor reducing or eliminating certain programs might strategically obstruct their

[21] Congressional Budget Office figures quoted from 'Dear Colleague' letter supporting the USA Act from McMorris Rodgers, available at https://www.ntu.org/library/doclib/2019/05/L19-05-06-USA-Act-Coalition-Letter.pdf.

[22] Supporters of this reform often refer to programs that lack an authorization of appropriations as "unauthorized programs"; however, the meaning of this term is subject to debate, as these programs still operate within their underlying statutory authority, even if they do not have an authorization of appropriations for the current fiscal year. We avoid the debate on what makes a program "unauthorized" and make explicit that this proposal pertains to funding for programs that lack an authorization of appropriations in a given fiscal year.

[23] For more information on support of this proposal, see https://mcmorris.house.gov/usaact/.

[24] For more information on criticism of this proposal, see David Reich, "Proposals to Address 'Unauthorized Appropriations' Would Do More Harm than Good," Center on Budget and Policy Priorities, August 31, 2016, available at https://www.cbpp.org/research/federal-budget/proposals-to-address-unauthorized-appropriations-would-likely-do-more-harm.

authorizations with the intent of de-funding them through this proposal. It can also be argued that this proposal would further undermine the appropriations process by requiring that additional authorizing bills move first before appropriations bills could be considered. The task force is divided on any proposals to phase out funding for programs with unauthorized appropriations.

*Summary Thoughts: Appropriations*

There are numerous potential ways to reform the budget and appropriations process. However, the problems with this process largely reflect broader ideological and partisan dynamics within the Congress. This makes the challenge of finding consensus on proposed reforms particularly difficult: many changes would have potentially important implications for the balance of power in negotiations over spending and taxes. As long as members are deeply divided on that bigger question, it is hard to see how reforms will dramatically improve the process. At the same time, the task force believes that relatively modest changes limiting the need for floor votes on the debt limit and lifting the ban on earmarks would likely improve the process at the margins. Additional, more ambitious changes may well be desirable, but the task force was unable to find a consensus on these proposals.

## Challenge: Evaluating and Deploying New Technologies[25]

Technology is essential to the functioning of a modern Congress. But the accelerating pace of innovation in society presents multifaceted challenges for the legislative branch. Congress finds itself facing a "pacing problem" -- the institution is currently unable to substantively and operationally keep pace with rapid technological change. There are three related manifestations of this pacing problem for Congress: *external*, as the substance and scope of policymaking and oversight fail to keep pace with technological innovation; *inter-branch*, as Congress falls behind the executive branch and fails to maintain capacity to operate as a co-equal branch; and *internal*, as Congress lags in incorporating new technology into its own processes and workflow. These three pacing problems compound each other—the lack of investment in Congress' own technology and technical capacity has not only hindered internal operations but also undermined the institution's capacity to regulate emerging technologies.

Congress currently operates with distributed and disconnected architecture around technology, making it difficult for the institution to engage in an effective and coordinated effort to improve technology. Decisions about integrating new technology in Congress are largely made in isolation by disparate offices on Capitol Hill, and Congress currently has no venue to share ideas or experiences with technology. As a result, there is little cumulative knowledge about what tools work in congressional offices, and many offices operate with outmoded and inefficient tools and little information about what alternative technologies might better meet their needs. The report from the Technology and Innovation Subcommittee documents a wide array of technological issues and deficiencies that Congress should address.

[25] The subcommittee on technology and innovation included Kevin Esterling (chair), Claire Abernathy, Casey Burgat, John Fortier, Marci Harris, Charles Stewart, and Mark Strand.

To rectify these deficiencies, Congress needs to take advantage of the many opportunities that technology affords to assist in its lawmaking and representational functions. The legislative branch needs to invest in upgrading to new information and communications technologies that will enhance the information available to members, support Congress's internal operations, and allow members to better engage with constituents.

Even more importantly, Congress needs to adopt an institutional process that will allow for ongoing review and coordination to identify and implement new technologies that can support its multifaceted work. Development of such a coordinated process for evaluating technologies and sharing technology best practices can enable individual offices to make evidence-based decisions about the technologies that will meet their needs.

We focus in this section on Congress's use of technology for its own operations, rather than its capacity to make effective technology policy for the nation more broadly. (On this latter question, see the discussion of the Office of Technology Assessment in the above section on Congressional Capacity as well as the report from the Technology and Innovation Subcommittee.)

*Recommendation #1: Establish a House Technology Working Group to identify technological improvements and collaborate on technology modernization efforts for the chamber*

A House Technology Working Group made up of members and staffers with interest and expertise in congressional technology would serve as a venue for disparate offices to coordinate and share information about how to modernize institutional operations. This working group can identify and evaluate technology that can support lawmaking, oversight, constituent engagement and overall operations for the institution and serve as a central clearinghouse for information and expertise about technology. The House Technology Working Group should consult widely, gathering input from relevant stakeholders and experts and using data to assess technology for the chamber. By bringing together staff from across the institution, the working group provides a new—and needed—forum for identifying shared technology challenges and assessing new tools.

The working group should make clear and actionable recommendations that would advance congressional technology. There are numerous technologies that could improve members' interactions with constituents and their access to relevant legislative information and could enhance the security and support available at the institutional level. The Technology and Innovation Subcommittee report offers an assessment of potential innovations in each of these areas, and these ideas reflect a range of technologies that the House Technology Working Group should study. Indeed, there is a significant need for the working group to assess these tools to determine their viability in the unique congressional context—only a working group that taps into the knowledge of relevant staffers can effectively evaluate how well these technologies will function in today's Congress.

To achieve these objectives, the House Technology Working Group should be authorized under the Committee on House Administration. In authorizing language, the working group should be charged with bringing together members and relevant staffers from member offices, committees, and support agencies to identify pain points in congressional technology and plan

out what areas are in need of attention. The authorizing language should also identify priority areas for House technology and establish task forces to specialize around each.[26]

Each task force will collaborate to examine problems and potential solutions in their area. Each task force should undertake a more substantial assessment of new technologies by coordinating pilot projects. In these pilot projects, individual members or offices could opt-in to collaborate with the working group to implement and test new technologies. These pilots would systematically evaluate technologies *within the specific contexts where they would be deployed*, and the working group could use information gathered across pilots to evaluate the relative effectiveness of different tools.

The House Technology Working Group and its task forces should have dedicated staff support, including a dedicated working group coordinator and project managers detailed to each task force. This support will enable the new organization to engage in the ongoing evaluation needed to make sure that congressional tools are keeping pace with technological advances.

The introduction of this new entity fills a significant void in Congress, creating opportunities for member offices, committees, and support agencies to better understand the technologies that would best support their work. The Technology and Innovation Subcommittee considers the creation of the House Technology Working Group and its task forces to be a reasonable and achievable short-term goal that can support informed decision-making about new technologies in Congress.

*Recommendation #2: Support the development and diffusion of best practices recommendations*

The House Technology Working Group would not only identify and evaluate new technologies, it would draw on evidence that it gathers from its own research and from pilot projects to develop best practice recommendations for the use of technology in Congress. The working group would actively communicate these evidence-based best practices, supporting the diffusion of recommended technologies across offices. These best practice recommendations should be clear, accessible, and readily available to congressional offices. And to more effectively support offices as they implement the recommended technologies, the working group should produce guidelines for offices on how best to integrate the new technologies into their processes.

These recommendations and resources compiled by the working group will help offices weigh the different technology options available for implementation in the congressional context and make informed decisions about what tools best support their work. This information would be made available to congressional offices but, importantly, all offices would retain autonomy

[26] The task forces will build on the model of two existing congressional task forces that have successfully advanced changes in Congress' technology infrastructure: the Bulk Data Task Force (BDTF) and the Communicating with Congress (CWC) project. Recommended initial task forces could include: Digital and Cyber Security task force, Legislative Office Technology task force, Committee Technology task force, Support and Operations task force. The House Technology Working Group should be authorized to establish additional task forces around emerging technology needs in the chamber.

over their internal office practices. They would choose which recommendations—if any—to adopt.

The best practice recommendations assembled by the House Technology Working Group would greatly help offices decide which tools best meet their needs and the needs of their constituents, and they represent a significant improvement over the ad hoc advice on technology that offices now navigate. The report from the Technology and Innovation Subcommittee represents a useful starting point for identifying technology best practices; it catalogs a number of innovative ideas for the use of technology to improve the institution's lawmaking and oversight functions, internal operations, and constituent engagement.

*Recommendation #3: Establish a House Technology Subcommittee within the Committee on House Administration*

While the House Technology Working Group would provide a venue for coordinating technological planning, implementation, and evaluation throughout the House, an even more substantial step would be the creation of a House Technology Subcommittee within the Committee on House Administration. This House Technology Subcommittee would serve as a permanent organizing entity to coordinate efforts to modernize congressional technology and would assume responsibility for the core tasks outlined for the working group. The subcommittee would continuously review areas in need of improved technology and identify and evaluate new and emerging tools. Importantly, the subcommittee would have the authority to consider legislative proposals and require reporting about House technology. This subcommittee would also have jurisdiction over the offices across the House responsible for different applications of technology, facilitating more effective coordination across distinct offices.

The creation of a new subcommittee within the House Administration Committee would reflect a sustained commitment to expanding Congress' technological capacity. The House Technology Subcommittee would become a clear, central point of contact for those in the institution interested in improving technology within their own offices. With a more permanent organization to lead technology modernization for the chamber, offices across the House would be in a better position to integrate new and emerging tools that would improve their internal operations and support their legislative, oversight, and constituent engagement work.

Introduction of a new subcommittee, however, represents a more significant change for Congress. For this reason, the Technology and Innovation Subcommittee recommends this as a long-term goal, seeing the House Technology Working Group as the more viable option for initiating the important and necessary work of technology modernization in the short term.

*New Technologies: Summary Thoughts*

Establishing a House Technology Working Group and supporting its coordination of an ongoing modernization effort can position Congress to continuously update its systems and to practice evidence-driven decision-making about its use of new technologies. Upgrading congressional tools and technologies can support core legislative, oversight and constituent engagement functions of Congress by broadening its access to stakeholders and constituents,

improving its use of data, and enabling more effective engagement with experts inside and outside of Congress.

Additionally, the modernization of congressional technology can help address other key challenges facing Congress as a lawmaking body and as a workplace.

- Improvements in technology can enhance the workflows and processes in Congress, expanding congressional capacity by allowing staff and members to make more productive use of their time.

- Technology can bring new voices into committee deliberations--congressional committees can hold "21st century hearings" on online platforms to facilitate the involvement of stakeholders, individuals, and experts outside of DC.

- New tools can help members and staff manage the demands of the legislative calendar. New technologies, such as video conferencing platforms, can be used to facilitate productive collaboration between members and their DC offices during district work periods. And, during longer periods in session, members can use innovative new tools to connect with their constituents.

- New technologies may allow for more remote work possibilities for congressional staff, increasing flexibility, improving job satisfaction, and, as a result, likely improving staff retention.

## Challenge: Improving floor and committee procedures[27]

*The Problem*

Debates over the appropriate structure and organization of congressional committees and the optimal process for considering legislation on the floor of the House of Representatives date to the chamber's early history. In recent years, these debates have been particularly prominent, with frequent calls from members of Congress, observers, and scholars to return to "regular order," to re-empower committees, and to open up the chamber floor for more amendment and debate.

Even so, there is less consensus on the nature of the problem with respect to floor and committee procedures than in some other areas. Many argue that Congress has become too "centralized." There is little doubt that more power rests in the hands of House party leaders than it did in an earlier era. We lack clear scholarly evidence on whether this centralization of power has had demonstrably negative consequences for legislative productivity and quality of legislation produced by the chamber. But even in the absence of evidence, members of Congress often contend that centralized power is a source of frustration in the course of their service and problematic for deliberation and policymaking. At the same time, many members have been

[27] The subcommittee on committee and floor processes was composed of Molly Reynolds (chair) James M. Curry, E. Scott Adler, Charles Stewart, Steven Teles, Yuval Levin, and Michael Minta.

reluctant to weaken party leaders in a way that might open up opportunities for majority party dissidents to coalesce with the minority to set the agenda.

The task force did not reach a consensus on substantial changes to committee or floor procedures. While there was at least some support among members for each of the options for change outlined below, members of the subcommittee agreed unanimously on only two suggestions: eliminating term limits for committee leaders and increasing committee staff levels and/or pay (a reform discussed in the section on congressional capacity above that also has implications for incentivizing committee activity). As a result, this section of our report generally focuses on briefly discussing the trade-offs involved with respect to potential reforms in this area.

*Issue 1: Centralization of power in bill development*

Centralization of the bill development process in the contemporary Congress reflects the reforms to the seniority system for selecting committee chairs adopted by Democrats in the 1970s and extended by Republicans following the 1994 election. It also reflects an adaptation to the realities of the current partisan era, in which committee-led processes often struggle to produce legislative outcomes.[28] The ability of leaders to, for example, construct a broader legislative package that cuts across the jurisdiction of several committees, can help to build broader support.[29]

One option to adjust this power distribution would be a return to strict seniority for selecting committee chairs. Appointing chairs on the basis of seniority made them independent of party leaders, allowing committees to become power centers in their own right. The seniority system also strengthens committees by rewarding member investment in extended committee service. Under the seniority system, chairs necessarily have long tenures on their committees and, presumably, the accompanying expertise.[30] A strict seniority system also reduces the influence of various other considerations, including fundraising, in the selection of chairs. At the same time, a strict seniority system would likely re-introduce issues present prior to the 1970s reforms, including reducing opportunities for involvement from rank-and-file members (which could potentially be mitigated by other committee rules changes) and the selection of chairs out of step with the rest of their party or the chamber.

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[28] James M. Curry and Frances E. Lee, "What is Regular Order Worth? Partisan Lawmaking and Congressional Processes," *Journal of Politics* (forthcoming 2020).

[29] James M. Curry, *Legislating in the Dark: Information and Power in the House of Representatives* (Chicago: University of Chicago Press, 2015); Peter C. Hanson, *Too Weak to Govern: Majority Party Power and Appropriations in the U.S. Senate* (New York: Cambridge University Press, 2014); Barbara Sinclair**,** *Unorthodox Lawmaking: New Legislative Processes in the U.S. Congress*, 5th ed. (Thousand Oaks, CA: CQ Press, 2016).

[30] Research suggests that committee chairs with greater seniority are more effective at advancing legislation they sponsor. Craig Volden and Alan E. Wiseman, "Legislative Effectiveness and Problem-Solving in the U.S. House of Representatives," in *Congress Reconsidered*, 11th ed., Lawrence C. Dodd and Bruce I. Oppenheimer, eds. (Thousand Oaks, CA: CQ Press, 2017), 259-284.

A second option, which was endorsed by members of the subcommittee on committee and floor procedures, would be to eliminate term limits for committee leaders. In the House, Republicans currently limit their members to three terms in the top spot on a panel, regardless of whether those terms are served in the majority or minority. Democrats have no such rule. While the absence of limits has periodically frustrated some Democrats who argue that the party's approach limits its ability to develop a next generation of congressional leaders, evidence suggests that the term limits policy has had deleterious consequences for the legislative effectiveness of Republican chairs, as they tend to be replaced "just as they hit their stride."[31] Removing the limits from the party's rules, then, has the potential to make committees more effective.

A third approach would be to give individual committees the ability to select their own chairs. This potentially strengthens committees by giving them more power to determine their own needs. In addition, the need for a chair candidate to build a power base within the committee might have the effect of strengthening the panel. It is possible that a committee-based process would become captured by party leaders. Alternatively, if the intra-committee selection process includes members of the minority party, deadlock or the selection of a minority party chair is a possibility.

*Issue 2: Centralization at the bill passage stage*

In the House of Representatives, the Speaker of the House controls which bills are scheduled for floor debate. Rarely, then, do bills that a majority of the majority party opposes come up for a recorded vote.[32] When bills come to the floor, there are fewer opportunities for amending them than in earlier periods, as more bills come to the floor under structured or closed rules.[33] Evidence suggests that moderate members of the majority party are advantaged by the Rules Committee in obtaining chances to offer their amendments.[34] In addition, there are ample high-profile examples of the minority party using amending opportunities as partisan efforts to embarrass their majority party colleagues, such as the recent experience with the motion to recommit at the start of the 116th Congress.[35] The majority party sometimes responds to this behavior by limiting amendment opportunities further.[36] While many criticize the rise in

[31] Lauren French and Anna Palmer, "More House Dems Want to Limit Time at the Top," *Politico* January 11, 2015; Craig Volden and Alan Wiseman, "How Term Limits for Committee Chairs Make Congress Less Effective," *Washington Post*, January 4, 2017.

[32] Since 2007, less than one percent of all passage votes in the House have involved a majority of the majority party voting in opposition.

[33] Donald R. Wolfensberger, "House Rules Data," Bipartisan Policy Center, April 11, 2019 <https://bipartisanpolicy.org/library/115th-congress-house-rules-data/>.

[34] Michael S. Lynch, Anthony J. Madonna, and Jason M. Roberts, "The Cost of Majority- Party Bias: Amending Activity under Structured Rules," *Legislative Studies Quarterly* 41.3 (August 2016): 633-655.

[35] Carl Hulse, "How Congress is Weaponizing a Series of Hot Button Votes," *New York Times*, March 9, 2019.

[36] For examples of both parties limiting amendment opportunities after partisan conflict, see Sarah Ferris, "Ryan Changes Rules for Spending Bills," *The Hill*, June 8, 2016 and Peter C. Hanson, "The Endurance

restrictive rules as depriving rank-and-file members of a role in the deliberative process, others note that bringing measures to the floor protected from amendment may increase the incentive of committees to report out legislation with the knowledge that their work is unlikely to be undone on the floor.[37]

Finally, in an earlier era of less polarized parties, scholars criticized congressional parties for not offering clear, competing sets of positions to the electorate.[38] While the more apparent ideological divide between today's parties may mean that party-line show votes are not necessary to educate the public about party differences, centralized floor processes do facilitate messaging opportunities that allow parties to draw clear distinctions between them.[39]

Several proposals have been made to open up the floor agenda in ways that limit majority leaders' control. One possibility would be to alter the discharge petition rule to make co-sponsoring a bill equivalent to signing a petition. Co-sponsorship is generally seen as a low cost way for members to take positions on issues;[40] signing a discharge petition, on the other hand, is a costly move for members of the majority party, who generally resist doing so even on bills they have co-sponsored.[41] Members, particularly of the majority party, would likely respond by choosing to co-sponsor fewer minority party bills. This may undermine the underlying goal of enhancing bipartisan lawmaking opportunities.

A second way to alter the discharge process would be to make signatures on the petitions secret until the 218 threshold is reached. The House followed this process prior to 1993; at the time, making signatures public was thought by some to *increase* the likelihood of successful use of the petition. Data indicates that there has not been a major difference in the number of

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of Non-Partisanship in House Appropriations," in *Congress Reconsidered*, 11th ed., Lawrence C. Dodd and Bruce I. Oppenheimer, eds. (Thousand Oaks, CA: CQ Press, 2017), 259-309.

[37] Thomas W. Gilligan and Keith Krehbiel, "Asymmetric Information and Legislative Rules with a Heterogeneous Committee," *American Journal of Political Science* 33.2 (May 1989): 459-490; Keith Krehbiel, "Restrictive Rules Reconsidered," *American Journal of Political Science* 41.3 (July 1997): 919-944.

[38] APSA Committee on Parties, "Towards a More Responsible Two-Party System," *American Political Science Review*, Supplement, 44.3 (September 1950): 1-96; E.E. Schattschneider, *Party Government: American Government in Action* (New York, Transaction Publishers, 1942).

[39] Frances E. Lee, *Insecure Majorities: Congress and the Perpetual Campaign* (Chicago: University of Chicago Press, 2016).

[40] Daniel Kessler and Keith Krehbiel, "Dynamics of Cosponsorship," *American Political Science Review* 90.3 (September 1996): 555-566; Gregory Koger, "Position Taking and Co-sponsorship in the U.S. House," *Legislative Studies Quarterly* 28.2 (May 2003): 225-246.

[41] Susan M. Miller and L. Marvin Overby, "Parties, Preferences, and Petitions: Discharge Behavior in the Modern House," *Legislative Studies Quarterly* 35.2 (May 2010): 187-209.

successful petitions before and after the rule change.[42] In addition, it is unclear how successful members would be at keeping information about the identity of signatories secret from majority party leaders, who would still pressure majority party members not to sign.

An alternative set of reforms would provide greater opportunities for legislation with overwhelming support to reach the floor. For example, one could expand the use of the "consensus calendar" under which legislation with a certain number of co-sponsors (currently, 290) but not reported by its committee of jurisdiction is placed on a special calendar from which the Speaker is required to call at least one bill most weeks the House is in session. Relatively few bills obtain at least 290 co-sponsors, however; as of this writing, between the 113th and 116th Congresses (2013-2019), a total of 72 measures reached that threshold. Of these, slightly more than half (41) received floor consideration anyway and of the 31 that did not, 11 were commemorative. As of this writing in the 116th Congress, of the 20 bills to garner at least 290 co-sponsors, five have seen floor action after motions were made to place them on the consensus calendar. Together, this suggests that, for example, requiring more than one bill per week to be called from the consensus calendar would have a relatively limited effect. It is possible, however, that a more robust consensus calendar would increase members' incentives to co-sponsor legislation by making the act of co-sponsorship potentially more meaningful. In addition, the current consensus calendar rules allow a committee of jurisdiction to render a measure ineligible for placement on the consensus calendar by reporting it out. As a result, if majority party leaders strongly prefer a measure to not reach the consensus calendar, they can pressure the committee to take action on it as a way of heading off potential floor action.

Still another potential reform in this area would be to ban roll call votes on amendments in the Committee of the Whole, but enable members to call a roll call on anything adopted in the COW after the bill is reported back to the floor. This was the practice in the House prior to the Legislative Reorganization Act of 1970, with COW amendments disposed of via voice or teller vote. Adopted amendments could get roll call votes later; failed amendments could not. This change would potentially disincentivize the offering of pure messaging amendments whose sole purpose is to make other members take difficult votes, as the value of so-called "gotcha" votes is lessened when the vote is not publicly recorded. The majority leadership could, then, allow a more open amending process. Restoring this approach would, however, reduce transparency in the House. In addition, it is unclear if the majority party leadership would remain committed to allowing a more open process if politically embarrassing amendments get adopted via the non-recorded votes in the COW.

*Issue 3: Incentivizing committee activity*

Committees routinely fail to reauthorize the federal programs under their jurisdictions, which also means they are potentially forgoing some oversight opportunities and, as a result, ceding power to the executive branch.[43] This behavior is encouraged by expectations of gridlock.

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[42] Sarah Binder, "Some Moderate Republicans Are Trying to Force a House Vote on DACA. Here's What That Means," *Washington Post*, May 10, 2018.

[43] E. Scott Adler and John Wilkerson, *Congress and the Politics of Problem Solving* (New York: Cambridge University Press, 2012); E. Scott Adler, Stefani Langehennig, and Ryan Bell, "Congressional

Why, in the view of committees, should they spend time constructing legislation that may not come to the floor and may not pass even if it is brought up for consideration? In addition, committees which do attempt to work on legislation sometimes find it difficult to reach agreement on proposals that are capable of passing both chambers without leadership support.[44]

There are several possible pathways to incentivize increased committee activity, though each has trade-offs. One idea is to increase opportunities for member credit claiming in bills, such as additional amending opportunities in markup or the inclusion of member requests in a committee report. Providing more opportunities for members to explicitly claim credit for specific provisions they added to legislation worked on in committee could increase members' feelings of efficacy in the legislative process and willingness to support the final product; this, in turn, could make committees more likely to work on legislation. Using amendments in markup, however, would require members to commit to spending more of their scarce time in markups rather than on other work.

An alternative approach to increasing committee activity would be to strengthen subcommittees. As noted above (see section on congressional capacity), this could be done by guaranteeing a staff member for each subcommittee, which would enhance their legislative capacity and, in turn, provide members with an additional venue to pursue policy goals. In a regime of fixed resources, however, increased subcommittee staffing could result in staffing or other funding cuts elsewhere. The rules could also guarantee that a subcommittee can hold hearings without permission of the full committee chair. This could increase subcommittees' ability to engage in legislative work and would likely increase the number of subcommittee hearings. While members might find additional hearings to be useful arenas in which to pursue their policy goals, more meetings would also place an additional time burden on members. A related idea would be to guarantee that full committees cannot meet during times subcommittees meet (reserve time on the calendar each week for subcommittees to meet, if they so choose), except with the consent of the subcommittee chairs. This reform, aimed at incentivizing subcommittee work, would, like the previous option, likely increase the number of subcommittee hearings and could have similar benefits. At the same time, it could create tension between the full committee chair and subcommittee chairs; in addition, it could reduce the time available for full committee meetings, which are also important venues for committee work.

Still another approach to incentivizing greater committee activity would be to encourage regular reauthorizations. This could be done by eliminating or dramatically curtailing the ability of lawmakers to waive the rules on unauthorized appropriations (for discussion of this potential reform, see the analysis of appropriations changes above). Alternatively, Congress could move more programs to annual authorizations similar to the National Defense Authorization Act. An annual authorization process could regularize committee operations, helping members and staff

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Capacity and Reauthorizations" in *Congressional Capacity*, Lee Drutman, Kevin Kosar, and Timothy LaPira, eds. (Chicago: University of Chicago Press, forthcoming); E. Scott Adler and Thad Hall, "Congress is Shirking Many of Its Most Basic Responsibilities," *Roll Call* Feb. 16, 2010.

[44] James M. Curry and Frances E. Lee, "Congress at Work: Legislative Capacity and Entrepreneurship in the Contemporary Congress," In *Can America Govern Itself?* In Frances E. Lee and Nolan McCarty, eds., (New York: Cambridge University Press, 2019): 181-219.

build effective working relationships. Annual authorizations would also provide additional opportunities for oversight. It is unclear, however, if committees would actually feel compelled to undertake annual authorizations and whether leaders would be willing to devote sufficient floor time to consider an increased number of bills in this vein.

*Committee and Floor Procedures: Summary Thoughts*

As detailed above, there are a number of possible reforms that could address member frustration with the high degree of centralization at the agenda and floor stages. However, each of these proposals entails trade-offs. The task force did not reach a consensus on how to weight the competing goals at work in almost all of these cases.

## Challenge: The Congressional Calendar[45]

*The Problem*

Concerns with the schedule kept by the House of Representatives tend to focus on: (1) The possibility that the institution is not spending enough total time in session to fulfill its core functions and address the nation's challenges; and (2) That the current schedule limits the abilities of many members of Congress to develop close professional or personal relationships, which may be important to deal making and legislating on Capitol Hill.

As the challenges facing the government have grown, the House schedule has stagnated, and by some metrics, its activity has declined. While the House is not spending *less* time in session than it used to, it also is clearly not spending *more* time in session trying to address national challenges. The number of *days* the House has spent in session during each congress has not consistently increased or decreased since the 80th Congress (1947-48). While the number of *hours* in session increased through the 1970s, there has not been any consistent change since then (see the subcommittee report for data on this and a range of related indicators).[46]

By other metrics, the House's levels of activity have declined. Members of the House are introducing fewer pieces of legislation than they used to. In the late 1960s, members introduced almost 50 bills per congress, on average. Today, that number is less than 20. Committee meetings have also become less commonplace,[47] with the number of subcommittee meetings per congress on a steady decline since the 1980s, even as the number of subcommittees has rebounded since 1995.

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[45] The calendar subcommittee was made up of Jason Roberts (chair), James M. Curry, John Fortier, Kevin Kosar, and Vanessa Tyson.

[46] Data from the Bipartisan Policy Center on the number of "working days" the House is in session also show little change since 1995, the first year such data are available. See, https://bipartisanpolicy.org/congress/.

[47] See, also, Jonathan Lewallen, Sean M. Theriault, and Bryan D. Jones, "Congressional dysfunction: An information processing perspective," *Regulation & Governance* 10(2), pp. 179-90.

The quantity of time, however, is not the only factor at play. Congress has settled into a work schedule of four-day workweeks, with business conducted between late Mondays and mid-Thursdays, and occasionally Friday mornings.[48] Members frequently spend just three nights a week in Washington (when the House is in session) and four nights in their districts.

This condensed Washington, DC workweek comes with both benefits and costs. A benefit for members, arguably, is that they may return to their districts weekly. Frequent trips home help legislators stay in close contact with their constituents and avoid the charge of succumbing to "Potomac Fever." Regular trips home also enable members who serve as caregivers for children or family members to continue to do so without uprooting to Washington, DC, where the costs of real estate purchases and rentals is high. Moreover, with advances in information technology in recent years, it is not always necessary for members of Congress to be present in Washington, DC to engage in some legislative tasks, or to interact with their staff.

Nevertheless, the short workweek comes with significant costs. Some legislators find the travel wearying. This is particular true for members who are parents of young children and must arrange for child care. The constant travel is also onerous for those whose districts are far from Washington, DC and/or have very limited air travel service. It also entails cost for American taxpayers.

But perhaps most important for Congress's role as a legislative institution, this arrangement of the House schedule may be making it more difficult for many members of Congress to develop close professional or personal relationships with one another. In interviews, former members and staff almost universally claim that close relationships bolster effective legislating and compromise.[49] Like any working professionals, members of Congress need to build interpersonal trust to work out legislation, cut deals, and get things done. This may be harder in a House of Representatives where most members spend little time together in Washington.

*Proposed Solutions*

There are two basic approaches that could addressing these concerns: (1) Expanding the congressional schedule; and (2) Rearranging the current schedule to allow for more extended periods of time in Washington. Each has the potential to help, but also entails genuine trade-offs. We briefly elaborate on these considerations below but emphasize that we did not reach a consensus on specific changes.

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[48] E.g., see the 2018 schedule at https://www.majorityleader.gov/sites/democraticwhip.house.gov/files/2018CALENDAR.pdf.

[49] Many of us have heard members of Congress and staff attest to this in interviews we have conducted for our research. See, also, Richard Simon, "When Friendship Trumps Politics," *LA Times* (September 21, 2008), https://www.latimes.com/archives/la-xpm-2008-sep-21-na-inouye21-story.html. On the importance of trust in Congress, see Eric Uslaner, *The Decline of Comity in Congress* (Ann Arbor, MI; University of Michigan Press, 1993).

*Potential reform: Expanding the schedule*

The number of days Congress schedules for legislative work is at the discretion of Congress. Chamber leadership, in consultation with members, can simply proactively choose to add more work days. The House of Representatives did just that in late 2016, announcing it would be in session 145 days in 2017, an increase of 12 days. Summer may prove a particularly obvious time for adding legislative days. The House usually allows legislators to spend the entire month of August in their home districts. This summer recess could be cancelled or shortened if the House had failed to pass annual appropriations bills. Obviously, the costs associated with expanding the schedule are legislators will be forced to spend more time away from their families and less time with constituents. These costs could be partially mitigated if members were provided with a housing allowance that made it more feasible for members to relocate their families to the DC area. This could be combined with a ban on members living out of their offices, a practice that has drawn criticism on several fronts and that creates an awkward work environment for many staff members.

*Potential reform: Rearranging the current schedule.*

Another option is to rearrange the House schedule so that members spend longer, more intensive stretches in Washington focused on legislative work, without adding any days to the annual legislative schedule.

First, the House may block the days they spend in DC—and out of it, by implication—into longer chunks. For example, rather than traveling in and out of DC each Monday and Thursday, legislators could spend two or three consecutive weeks in town (and perhaps work Saturdays) and then depart for two or three weeks. Alternatively, legislators might work "super weeks" lasting from a Tuesday through the Thursday of the following week. Either way, blocking longer stretches of work time in DC would have the added benefit of reducing the number of hours legislators spend in transit. Again, the cost of this "block" sort of reform is members would spend longer stretches of days away from their families and districts, but it need not necessitate spending more *total* days away from home and away from constituents. This reform would also upset the work schedules for many congressional staffers.

Second, the House might lengthen the current legislative workday to allow more time for substantive legislative activities, such as committee meetings, hearings, negotiations, and debates. This can be achieved by adding legislative hours to each day and by reducing the time legislators spend fundraising. The latter may be achieved by relegating fundraising activities, such as "dialing for dollars," to days of the week when the House is out of session. While members of Congress clearly engage in meaningful legislative work outside of regular legislative session hours, providing or requiring more time to be focused on this work has the potential to benefit the House's productivity. On the other hand, members devote so much time to fundraising out of perceived political necessity. Mandates to lengthen the congressional work day do nothing to address the underlying political incentives for members to raise funds or the time constraints they face as a result.

Third, the House could consider acquiring the technical capacity to allow some functions such as subcommittee meetings to occur remotely while most members are away from the DC

area. This could increase the time available for such meetings while not reducing the amount of time members are away from their district-based home.

*The Calendar: Summary Thoughts*

Frustration with the congressional schedule is widespread. While creating longer "chunks" of time in Washington may well improve aspects of this situation, the bottom line is that any changes to the schedule also come with costs to other activities that members value.

## Conclusion

In its rules package adopted in January 2019, Congress stated its ambition to build a "more modern and efficient Congress." To assist Congress in this effort, the APSA brought together experts on Congress from across academia, the think tank, and advocacy communities to assemble research and make recommendations. Our efforts focused particularly on the issue areas Congress indicated most interest in examining: institutional rules and procedures, staffing, the calendar, and technology and innovation.

In all cases, institutional reforms involve complex considerations of tradeoffs, but our research yielded expert consensus around some specific recommendations. Broadly:

1. To strengthen its capacity to collect information and make policy independently of the executive branch and lobbyists, Congress needs to restore and expand its access to institutional expertise.
2. To make working for the institution more attractive, Congress needs to modernize its human resources practices to ensure that it is a place that can attract and retain talented professionals.
3. In the areas of budgeting and appropriations, Congress should consider reforms that restore its bargaining flexibility and reduce the likelihood of a legislatively-induced debt limit crisis.
4. With respect to committee processes, we recommend lifting term limits for committee chairs, allowing them to take better advantage of their increased legislative effectiveness as they become more experienced with the issues within the committee's jurisdiction.
5. Congress needs to institutionalize internal processes to stay abreast of emerging technologies that can improve lawmaking and representation and to disseminate best practices throughout the legislative branch.

In other areas, however, tradeoffs between competing considerations were sufficiently weighty on multiple sides that the committee was unable to offer specific recommendations. In particular, Congress's competing needs for efficiency and representation create difficult dilemmas with respect to the legislative calendar and the relative balance of power between party leaders and committees. In these cases, we hope that this report clarifies alternatives and informs the institution's choices.

**Appendix: Subcommittee Memberships**

**Congressional Capacity**
Lee Drutman (chair)
C. Lawrence Evans
David Hawkings (nonvoting)
Bruce Patton
Ruth Bloch Rubin

**Staff Diversity and Retention**
Kathryn Pearson (chair)
Casey Burgat
Menna Demessie
Bernard Fraga
Tracy Sulkin
Michele Swers
Vanessa Tyson

**Budget & Appropriations Process**
Nolan McCarty (chair)
Sarah Binder
Josh Chafetz
Meredith McGehee
Mark Strand
Bruce Patton

**Technology and Innovation**
Kevin Esterling (chair)
Claire Abernathy
Casey Burgat
John Fortier
Marci Harris
Charles Stewart
Mark Strand

**Committee and Floor Process**
Molly Reynolds (chair)
James M. Curry
E. Scott Adler
Charles Stewart
Steven Teles
Yuval Levin
Michael Minta

**Calendar Reform**
Jason Roberts (chair)
James M. Curry
John Fortier
Kevin Kosar
Vanessa Tyson