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Protecting the Right to Organize in Congress

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While working in the United States Congress can be exciting and rewarding, many Capitol Hill staffers have long faced low pay, long hours, and other working conditions that are often challenging. A [January 2022 study](#) found that one-in-eight staffers based in D.C. do not make a living wage. House staffers, on average, had not seen a pay increase in more than 14 months. In the Senate, the [Congressional Research Service](#) found that median pay for several staff positions has decreased substantially over time. Between Fiscal Years 2001 and 2020, for example, median pay for a Senate press secretary fell by 23.35%.

Other long-standing problems include the lack of diversity, equity, and inclusion and barriers to advancement that are especially acute for people of color. A [study from the Joint Center for Political and Economic Studies](#) found that just 14% of all senior staff in the House and [11% of senior staff in the Senate](#) were BIPOC, despite making up 38% of the U.S. population.

Reports indicate that these problems [contribute](#) to low job satisfaction, high turnover, and brain drain on Capitol Hill. This, in turn, has negative ramifications for effective policy-making, affecting all Americans. Furthermore, the lack of diversity among Capitol Hill staff, especially at senior levels, means that key perspectives may be absent during the lawmaking process—potentially resulting in laws that fail to meet communities' needs.¹

There have been [myriad studies](#) released over many years detailing the challenges Congressional staff face and policy solutions that might remedy them. These discussions took on a new urgency in the wake of the white supremacist insurrection on January 6, 2021, after which staff associations representing primarily people of color met with House Speaker Nancy Pelosi, Senate Majority Leader Chuck Schumer and others to discuss workplace concerns. More recently, on February 4, 2022, the newly formed Congressional Workers Union [released a statement](#) announcing “staff efforts to unionize the offices and committees of the United States Congress.”

¹ [A 2021 Compensation and Diversity Study](#) from the House Office of Diversity and Inclusion found that of all House staffers, 69.5% are White, 14.5% are Black or African American, 12.2% are Hispanic, Latinx, or Spanish, and 6.7% are Asian. [A 2021 survey](#) from the Senate Democratic Caucus found that of all Senate Democratic personal office staffers, 61% are White, 14% are Black or African American, 14% are Latino, 9% are Asian or Pacific Islander, 2% are Middle Eastern or North African, and 2% are Native American, Hawaiian or Alaskan.

Discussions about congressional staff unionization are not new. The regulations that would permit congressional staff unionization were drafted 26 years ago, but Congress has never taken the necessary steps to approve them.

Congressional Accountability Act

In 1995, as part of the incoming Republican majority's Contract with America, Congress passed the [Congressional Accountability Act](#) (CAA). The CAA was intended to apply federal laws that applied to other employers and workers to Congress. In total, CAA applied eleven civil rights, labor, and workplace safety laws to Congress and its associated legislative agencies. It also opened the door for congressional staff unionization.

Specifically, [Section 220](#) of the CAA creates and protects the right of legislative branch employees to “form, join, or assist a labor organization for the purpose of collective bargaining without fear of penalty or reprisal.”² However, while this allows certain legislative branch support agencies³ to unionize, Section 220(e) created an additional hurdle when it comes to the staff of congressional committees and individual Senators and Representatives. In order for personal office, committee, leadership staff, and legislative support staff to unionize *and* be covered by legal protections, the Board of Directors of the Office of Congressional Workplace Rights is required to undergo a notice and comment process and issue regulations, which they completed in 1996.⁴

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<https://www.ocwr.gov/rights-protections/other-workplace-protections/collective-bargaining-and-unionization>

³ Current unions in Congress include the Architect of the Capitol, the Capitol Police, the Library of Congress, the Government Accountability Office, and the Government Publishing Office.

⁴ Section 220(e) additionally applies to the Office of the Vice President (as President of the Senate); the following offices within the Office of the Secretary of the Senate: Offices of the Parliamentarian, Bill Clerk, Legislative Clerk, Journal Clerk, Executive Clerk, Enrolling Clerk, Official Reporters of Debate, Daily Digest, Printing Services, Captioning Services, and Senate Chief Counsel for Employment; the following offices within the Office of the Clerk of the House of Representatives: Offices of Legislative Operations, Official Reporters of Debate, Official Reporters to Committees, Printing Services, and Legislative Information; the Office of the Legislative Counsel of the Senate, the Office of the Senate Legal Counsel, the Office of the Legislative Counsel of the House of Representatives, the Office of the General Counsel of the House of Representatives, the Office of the Parliamentarian of the House of Representatives, the Office of the Law Revision Counsel; and the Congressional Budget Office, and the Office of Congressional Workplace Rights.

Issuance of Regulations by the Office of Compliance Board

On September 4, 1996, the Office of Compliance (now known as the Office of Congressional Workplace Rights) Board of Directors issued regulations in which it [concluded](#) that, “the requested blanket exclusion of all of the employees in certain section 220(e)(2) offices was not required under the stated statutory criteria” and that accordingly, “the requirements and exemptions of chapter 71 shall apply to covered employees who are employed in section 220(e)(2) offices in the same manner and to the same extent as those requirements and exemptions are applied to covered employees in all other employing offices.” As [required](#) by the CAA, the Board also stated that in order for the regulations to go into effect [that](#):

“(1) the version of the regulations that shall apply to the Senate and employees of the Senate should be approved by the Senate by resolution; (2) the version of the regulations that shall apply to the House of Representatives and employees of the House of Representatives should be approved by the House of Representatives by resolution; and (3) the version of the regulations that apply to other covered employees and employing offices should be approved by concurrent resolution.”

As stated in the CAA, the [regulations](#) would exclude management officials, supervisors, confidential employees, and employees engaged in personal work from coverage. The [regulations](#) would allow the staff of each employing office to unionize if a majority of its employees vote to do so in a secret ballot election. Under the regulations, an employing office is defined as:

1. The personal office of a Member of the House of Representatives or a Senator;
2. A committee of the House of Representatives or the Senate or a joint committee;
3. Any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate; or
4. The Capitol Guide Board, the Capitol Police Board, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, the Office of Compliance, and the Office of Technology Assessment.

This was not welcomed by House Republicans and in the lead up to the rulemaking process, former House Speaker Newt Gingrich [stated](#):

“[P]ermitt[ing] unions in the offices of committees and individual legislators would drive a wedge between members of Congress and their loyal aides; give unions access to confidential legislative strategies, particularly as those

strategies apply to Congressional consideration of labor law, and disrupt Congress with rafts of unfair-labor-practice complaints.”

Similarly, Rep. Bill Thomas, former Chair of the House Oversight Committee, filed a 28-page comment with the Board objecting to its approach. The comment [stated](#):

"Union membership would create a potential conflict of interest between union loyalty and loyalty to a member and his or her legislative positions ... [I]t would directly impair the alter ego relationship between a member and a unionized staffer. Unionized members would have access to confidential information regarding the member's legislative positions and strategies."

After the regulations were issued, they were promptly [rejected](#) by House Republicans, and there was no significant effort made by House Democrats to support these regulations and advance labor rights for their staff. Furthermore, House Republicans pushed to have the regulations remanded for further consideration and held an oversight hearing to question the Office of Compliance's rulemaking process. Notably, Sen. Chuck Grassley, who sponsored the CAA, wrote a [law review article](#), expressing his discontent with Congress's refusal to fully implement Section 220:

“This is a disgrace to the principles supporting the CAA. Congress has not approved these regulations because a number of powerful members disagree with their content. The regulations, as drafted, basically allow all legislative employees to unionize. The House Oversight Committee voted to send the regulations back to the Office of Compliance, citing questions about the method used to promulgate these regulations. The Office of Compliance claims that it does not have the authority to redraft the regulations. Whether it has the authority is unclear, but the point is that this issue is at a stalemate. All of us in Congress, as well as the Office of Compliance, are responsible for working out this stalemate. The result is that no regulations are in effect, and this section of the Act is not being implemented.”

Current Status

Since 1996, Congress has not acted further on labor rights for congressional staff. During [a Committee on House Administration hearing](#) on November 9, 2021, Rep. Jamie Raskin asked witnesses representing the Office of Congressional Workplace Rights whether the regulations issued in 1996 remained applicable—and, if so, “would it suffice for either house to pass a resolution to allow staff members in the respective chambers to organize?” Barbara Camens, a member of the Board of Directors at the Office of Congressional Workplace Rights, acknowledged that the

regulations were, at that point, 25 years old, but affirmed that they remained available for Congress to approve. She responded to Rep. Raskin:

“I do believe that you stated the historical course of events accurately, in the sense that in 1996 our Board adopted regulations that would govern the rights of collective bargaining and unionization with regard to members of Congress...in order for them to go into effect and be issued, it would require action on the part of the House and the Senate through resolution, and I believe the position of our office is that those regulations are available for approval by Congress.”

Accordingly, the House would need to pass a resolution to allow House staff to unionize with protections, and the Senate would need to pass a resolution to allow Senate staff to unionize with protections. Both chambers would need to pass a concurrent resolution for all remaining Congressional staff to unionize with protections. Such resolutions would provide clear legal protections from retaliation and make unmistakably clear that managers must bargain with a staff union.

On February 3, 2022, reporter Pablo Manríquez asked House Speaker Nancy Pelosi if she would “support staffer attempts to unionize here in Congress?” The Speaker’s [deputy chief of staff released](#) the following statement later that day:

“Like all Americans, our tireless Congressional staff have the right to organize their workplace and join together in a union. If and when staffers choose to exercise that right, they would have Speaker Pelosi’s full support.”

Soon after, a spokesperson for Senate Majority Leader Chuck Schumer also stated [his support](#) for congressional unionization, saying: “Leader Schumer believes that hard-working Senate staff have the right to organize their workplace and if they chose to do so, he would support that effort.”

Numerous Democratic House Members similarly voiced their support for a staff union, as did the [AFL-CIO](#). The following day, the [Congressional Workers Union announced](#) staff efforts to unionize Congress. Shortly thereafter, [Rep. Andy Levin said](#), “at the request of the new union, next week we will take legislative action to afford congressional staff the freedom to form a union — a fundamental right of all workers.” A spokesperson for [Senator Sherrod Brown said](#) the senator would work with his colleagues on a similar resolution. As of the date of publication, [18 senators](#) have issued statements in support of congressional unionization. White House Press Secretary Jen Psaki said on February 8 that [President Biden supports](#) staffers’ organizing efforts. Republicans in the House and Senate, meanwhile, have expressed opposition.

On February 9, Rep. Andy Levin introduced a resolution (H. Res. 915) protecting staff's right to organize and bargain collectively. More than 130 Democratic House members signed on as original cosponsors.