

**THE ATROPHYING OF THE CONGRESSIONAL RESEARCH  
SERVICE’S ROLE IN SUPPORTING COMMITTEE  
OVERSIGHT**

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The Congressional Research Service (CRS) in its current incarnation was established in 1970.<sup>1</sup> Congress designed the nonpartisan agency to provide congressional committees with research capacity for oversight.<sup>2</sup> CRS experts are supposed to identify issues for each new Congress to address and help the committees carry out rigorous, lengthy inquiries into executive agencies’ activities.<sup>3</sup> The agency closely assisted Congress in a myriad of major oversight efforts, including the Watergate investigation, the implementation of the Freedom of Information Act, and the Iran-Contra affair.<sup>4</sup>

Over time, CRS’ role in oversight declined due to various factors, most of which were out of its control.<sup>5</sup> Congress changed. Congressional committees, particularly in the House of Representatives, lost capacity, and hyper-partisanship turned much oversight into political point-scoring rather than an exercise in governing that required expert assistance. CRS’ budget went flat, which fueled a steady decline in its staff count and capacity to assist Congress.<sup>6</sup> Additionally, the agency, for reasons

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1. *About CRS: History and Mission*, LIBR. CONGRESS, <http://www.loc.gov/crsinfo/about/history.html> (last updated Nov. 15 2012).

2. 2 U.S.C. § 166(d)(7) (1999).

3. Author email correspondence with Louis Fisher (Jan 21, 2018), Harold Relyea (Jan. 22, 2018), and Morton Rosenberg (Feb. 13, 2018).

4. *See id.*

5. *See* Kevin R. Kosar, *Why I Quit the Congressional Research Service*, WASH. MONTHLY (Jan./Feb. 2015), <https://washingtonmonthly.com/magazine/janfeb-2015/why-i-quit-the-congressional-research-service/>.

6. *See* Bridget Bowman, *Flat Funding Could Hurt the Congressional Research Service*, ROLL CALL (Apr. 28, 2015, 5:00 AM), <https://www.rollcall.com/news/flat-funding-could-hurt-congressional-research-service>.

unclear, weakened itself by filling its senior specialist positions with managers, and became less eager to detail CRS staff to committees.

CRS staff less frequently work with committees to conduct oversight, and certainly do not do so as a matter of course. Instead, they are occasionally asked to participate in ad hoc, short-term oversight engagements, but spend most of their work hours serving as a help desk for congressional staff seeking answers to often rudimentary questions.

#### I. THE PRESENT CONGRESSIONAL RESEARCH SERVICE: A HELP DESK FOR CONGRESS

The Congressional Research Service is an agency within the legislative branch of the federal government.<sup>7</sup> It employs 600 civil servants,<sup>8</sup> who are hired based upon objective criteria relating to their education and training. Individuals' partisan affiliation plays no role in hiring decisions.<sup>9</sup>

Most CRS employees work within its research units (sixty to eighty persons per division), which are organized loosely around broad subject matter realms: "American Law; Domestic Social Policy; Foreign Affairs, Defense and Trade; Government and Finance; and Resources, Sciences and Industry."<sup>10</sup> The agency's Knowledge Services Group employs a large corps of information specialists and reference librarians, who support the research divisions, and also directly assist legislators and congressional staff.<sup>11</sup>

CRS often is referred to as Congress's think-tank.<sup>12</sup> Its self-proclaimed mission states: "CRS serves Congress throughout the legislative process by providing comprehensive and reliable legislative research and analysis that are timely, objective, authoritative and confidential, thereby contributing to an informed national legislature."<sup>13</sup> CRS' analysts and reference staff help Congress better understand issues and policies by digging up facts, compiling data, drafting memoranda

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7. *See id.*

8. *About CRS: Organizational Structure*, LIBR. CONGRESS, <http://www.loc.gov/crsinfo/about/structure.html> (last updated Nov. 17, 2017).

9. *See Congressional Research Service Careers*, LIBR. CONGRESS, <http://www.loc.gov/crsinfo/> (last visited Apr. 18, 2017).

10. CONG. RESEARCH SERV., *supra* note 9.

11. *About CRS: Knowledge Service*, *supra* note 8.

12. *E.g.*, Lisa Rein, *Trying to Crack Open Congress's Confidential Think Tank After a Century of Secrecy*, WASH. POST (Oct. 29, 2015), [https://www.washingtonpost.com/news/federal-eye/wp/2015/10/29/a-confidential-arm-of-congress-gets-more-secretive/?noredirect=on&utm\\_term=.ad6f94157a24](https://www.washingtonpost.com/news/federal-eye/wp/2015/10/29/a-confidential-arm-of-congress-gets-more-secretive/?noredirect=on&utm_term=.ad6f94157a24).

13. *About CRS: History and Mission*, *supra* note 1.

and reports, and generally being available to discuss matters.<sup>14</sup> They also teach classes to help legislators and staffers alike to better understand how Congress and the executive branch operate.<sup>15</sup>

What CRS does not do nearly as much as it once did is help Congress with oversight. To be clear, however, its staff still helps committee staff identify witnesses, draft questions, and provide background support.<sup>16</sup> CRS experts themselves testify at hearings—some sixteen times in 2016.<sup>17</sup> In rare instances, a CRS staffer may be detailed to a committee for several months to help it conduct oversight.

Mostly, however, the agency's workload is devoted to legislative support activities with little nexus to oversight. CRS' own data indicates as much. In the 2016 Fiscal Year (FY2016), Congress placed with CRS:

more than 62,000 requests for custom analysis and research. The Service hosted more than 9,200 congressional participants at seminars, briefings, and training; published more than 3,500 new or updated reports; summarized more than 6,300 bills; and maintained nearly 10,000 products on its website for Congress, CRS.gov, which received over 1.7 million views. Overall, CRS provided confidential, custom services to 100% of Member and standing committee offices.<sup>18</sup>

Of the approximately 62,000 requests for help from Congress, the vast proportion—about 52,000, or 83%—come from congressional staff and were satisfied via email or telephone calls,<sup>19</sup> which is indicative of the rudimentary nature of so many of the congressional inquiries.<sup>20</sup>

CRS researchers regularly are asked to help congressional offices respond to constituent requests, and to debunk nonsense citizens have read on the Internet and brought to legislators' attention.<sup>21</sup> The agency's employees have had to devote time to producing non-policy documents like the Martin Luther King, Jr. Day Speech Resources: Fact Sheet, which aims to assist “congressional offices with work related to Martin

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14. *See generally* Kosar, *supra* note 5.

15. CONG. RESEARCH SERV., ANNUAL REPORT: FISCAL YEAR 2016 43–46 (Jan 2017).

16. *Id.* at 1–3.

17. *Id.* at 54–125 (indicating sixteen incidents of congressional testimony).

18. *Id.* at 3.

19. *Id.* at 2 (CRS reporting 62,491 products and services delivered in FY2016, of which 52,058 were satisfied through email or phone calls).

20. These days, it is exceedingly rare for legislators themselves to call CRS. Author review of CRS Mercury congressional request data (Oct. 2014).

21. Kosar, *supra* note 5.

Luther King, Jr. Day,”<sup>22</sup> and a bibliography on surveillance policy by high school debate teams.<sup>23</sup> At one time, some employees within the agency kept a “wall of shame”—a collection of the silliest congressional requests the agency had received, such as calculating the hourly pay of a reality television star and assisting with the homework of constituents’ children.<sup>24</sup>

CRS, thus, increasingly has become a help desk and training service for Congress. This function is not at all what was contemplated in its originating statute, which gave it a significant role in congressional oversight.<sup>25</sup>

## II. THE CONGRESSIONAL RESEARCH SERVICE PAST: AUGMENTER OF OVERSIGHT

The role of CRS in oversight goes back to 1946, when Congress enacted the Legislative Reorganization Act (LRO).<sup>26</sup> The law made many changes to the organization and operations of Congress.<sup>27</sup> It reduced the number of standing committees, re-drew committee jurisdictions, created a new budget process, put some curbs on lobbying, and even upgraded the Senate cafeteria.<sup>28</sup>

This soup to nuts reform was driven by various factors—not least the rapid expansion of the executive branch since the *fin de siècle*.<sup>29</sup> In 1900, “Congress could roughly apprehend the rudiments of the whole of the federal government: There were eight departments . . . with 230,000 employees, 135,000 of whom worked for the Post Office Department.”<sup>30</sup> Come 1945, the federal government employed more than three million civilians scattered across myriad agencies, many of which had been

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22. CONG. RESEARCH SERV., R44339, MARTIN LUTHER KING, JR. DAY SPEECH RESOURCES: FACT SHEET (Jan. 9, 2018).

23. S. DOC. NO. 114-5 (2015–16).

24. Author experience (2003–2014).

25. See Legislative Reorganization Act of 1946, Pub. L. No. 79-601, 60 Stat. 812.

26. *Id.*

27. See *id.*

28. See *id.*

29. Congress also was held low in public esteem, due to various missteps and the rise of charismatic presidents (e.g., Franklin D. Roosevelt) who utilized executive actions and war-time powers to position themselves as national leaders and problem-solvers. See generally ARTHUR M. SCHLESINGER, JR., THE AGE OF ROOSEVELT: THE CRISIS OF THE OLD ORDER, 1919–1933 (1957); STEPHEN SKOWRONEK, THE POLITICS PRESIDENTS MAKE: LEADERSHIP FROM JOHN ADAMS TO BILL CLINTON (1997).

30. Kevin R. Kosar, *How to Strengthen Congress*, NAT’L AFFAIRS (Fall 2015), <https://www.nationalaffairs.com/publications/detail/how-to-strengthen-congress>.

hurriedly set up during the Great Depression and the Second World War.<sup>31</sup>

Re-establishing a bit of the balance in the tripartite system meant strengthening the legislative branch, and giving it the capacity to carry out its duties. President Harry Truman welcomed the reforms as he understood that Congress was struggling to work with the ascendant executive branch.<sup>32</sup> He stated:

Both as United States Senator and as President, I have had occasion to observe some of the outmoded organizational and procedural traditions that have burdened the Legislative Branch . . . The present Act should permit easier and closer relations between the executive agencies of the Government and the Congress. The expanded staff of the Congressional committees and of the agencies in the Legislative Branch can become a valuable link between the policy-making deliberations of the Congress and the practical administrative experience of the Executive Branch.<sup>33</sup>

The LRO bolstered congressional oversight by strengthening the chambers' committee systems, which featured overlapping and anachronistic jurisdictions.<sup>34</sup> The law cut the number of committees significantly and consolidated their authority.<sup>35</sup>

Critically, the LRO augmented committee manpower.<sup>36</sup> The law increased the quantity of committee staff and expanded committee access to nonpartisan expertise by authorizing the Legislative Reference Service (LRS)—later renamed CRS—to hire senior specialists—policy experts.<sup>37</sup>

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31. See U.S. OFF. PERS. MMT., *Historical Federal Workforce Tables: Executive Branch Civilian Employment Since 1940*, <https://www.opm.gov/policy-data-oversight/data-analysis-documentation/federal-employment-reports/historical-tables/executive-branch-civilian-employment-since-1940/> (last visited Apr. 19, 2018); see Jonathan Turley, *The Rise of the Fourth Branch of Government*, WASH. POST (May 24, 2013), [https://www.washingtonpost.com/opinions/the-rise-of-the-fourth-branch-of-government/2013/05/24/c7faad0-c2ed-11e2-9fe2-6ee52d0eb7c1\\_story.html](https://www.washingtonpost.com/opinions/the-rise-of-the-fourth-branch-of-government/2013/05/24/c7faad0-c2ed-11e2-9fe2-6ee52d0eb7c1_story.html).

32. Presidential Statement on Signing the Legislative Reorganization Act 1946, PUB. PAPERS 191 (Aug. 2, 1946).

33. *Id.*

34. See Roger H. Davidson, *The Advent of the Modern Congress: The Legislative Reorganization Act of 1946*, 15 LEGIS. STUD. Q. 357, 365 (1990).

35. *Id.*

36. See *id.* at 366–67.

37. *Id.* at 368.

LRS—which was housed in the Library of Congress—had existed since 1914 and was staffed mostly by librarians and attorneys.<sup>38</sup>

The 1946 statute increased the agency’s in-house knowledge by adding more staff with deep expertise.<sup>39</sup> It authorized new positions in the areas thought most critical to the legislature and the nation: agriculture, industrial organization, international trade, banking, veterans’ affairs, and more.<sup>40</sup> With additional employees came an additional statutory responsibility: “to advise and assist any committee of either House or any joint committee in the analysis, appraisal, and evaluation of legislative proposals.”<sup>41</sup>

The addition of LRS experts enabled congressional committees to call upon it more often—which it did. In the 1950s and 1960s, LRS experts aided committees assessing current policy and considering improvements on a broad range of topics, including national defense, international relations, government organization, and social policy including education and youth employment programs.<sup>42</sup> Frequently, LRS experts’ engagements with committees lasted many months, culminating in the production of a report that were published as a committee prints.

Charles Quattlebaum’s report titled “Federal Aid to Students for Higher Education” is illustrative of the close collaboration between LRS’ experts and committees.<sup>43</sup> The House Committee on Education wanted help thinking about expanding access to post-secondary education in the United States.<sup>44</sup> Quattlebaum and two of his LRS colleagues scoped the report’s coverage in collaboration with legislators.<sup>45</sup> LRS and committee staff then obtained information from the executive branch, state governments, and even the education ministries of foreign nations.<sup>46</sup> None of these entities had to respond, but they did because LRS’ requests for information were explicitly made at the behest on a congressional committee.<sup>47</sup> The resultant, a nearly two hundred page

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38. CONG. RESEARCH SERV., CRS AT 100: INFORMING THE LEGISLATIVE DEBATE SINCE 1914 10–21 (2014), <https://archive.org/details/CRSAt100Booklet072014>.

39. *See id.*

40. Legislative Reorganization Act, Pub. L. No. 79-601, 60 Stat. 836 (1946).

41. *Id.*

42. *See Search Book/Printed Material, LIBR. CONGRESS*, [https://www.loc.gov/books/?q=%22legislative+reference+service%22&fa=contributor%3Alibrary+of+congress.+legislative+reference+service&all=true&sp=8&sb=date\\_desc](https://www.loc.gov/books/?q=%22legislative+reference+service%22&fa=contributor%3Alibrary+of+congress.+legislative+reference+service&all=true&sp=8&sb=date_desc) (search “legislative reference service”) (listing LRS studies).

43. CHARLES A. QUATTLEBAUM, LEGIS. RES. SERVS., FEDERAL AID TO STUDENTS FOR HIGHER EDUCATION (June 1956).

44. *See id.*

45. *See id.*

46. *See id.*

47. *See id.*

study was published by the committee, and greatly informed its consideration and enactment of the National Defense Education Act in 1958.<sup>48</sup>

In 1970, Congress further bolstered its oversight capacity by enacting another reorganization statute.<sup>49</sup> Among the many significant changes were the expansion of LRS and its rechristening as the Congressional Research Service. The replacement of the word “reference” with “research” was not accidental, but indicated a further evolution in the agency’s nature.<sup>50</sup> In the previous two decades, the executive branch had grown larger and more difficult for legislators to comprehend and direct, accordingly Congress increased funding for CRS staff and expanded the number of senior specialists, who worked directly with committees with very little agency management direction.<sup>51</sup>

The agency would continue to help committees assess policies and evaluate alternative policy options.<sup>52</sup> But with more CRS personnel came more oversight duties for CRS. At the start of each new Congress it was to prepare for

each committee of the Senate and House of Representatives and each joint committee of the two Houses, at the opening of a new Congress, a list of programs and activities being carried out under existing law scheduled to terminate during the current Congress, which are within the jurisdiction of the committee . . . [and] to make available to each committee of the Senate and House of Representatives and each joint committee of the two Houses, at the opening of a new Congress, a list of subjects and

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48. *See id.*; National Defense Education Act, Pub. L. No. 85-864, 72 Stat. 1580 (1958).

49. Legislative Reorganization Act of 1970, Pub. L. No. 91-510, 84 Stat. 1140 (1970).

50. Harold C. Relyea, *Across the Hill: The Congressional Research Service and Providing Research for Congress—A Retrospective on Origins*, 27 GOV’T INFO. Q. 414–422 (Oct. 2010).

51. For example, CRS management would assign a typical CRS researcher congressional requests to work upon, and any written work produced would be reviewed by multiple managerial tiers of the agency. Senior specialists would be called directly by committees and anything they wrote received only CRS agency-level review. Harold C. Relyea, *Across the Hill: The Congressional Research Service and Providing Research for Congress—A Retrospective on Personal Experience*, 29 GOV’T INFO. Q. 275–80 (Mar. 2012).

52. *See* 2 U.S.C. § 166(d) (1999).

policy areas which the committee might profitably analyze in depth.<sup>53</sup>

The statute also codified what had been a longstanding practice: that CRS was obliged upon request to help committees prepare for hearings. “[U]pon request made by any committee or Member of the Congress, [CRS shall] prepare and transmit to such committee or Member a concise memorandum with respect to one or more legislative measures upon which hearings by any committee of the Congress have been announced.”<sup>54</sup> Congress also authorized CRS to produce research and reference materials “in anticipation” of committee or member needs.<sup>55</sup> Congress funded CRS to significantly increase its staff count. The agency went from around 360 employees in 1971 to just under 800 workers in 1985.<sup>56</sup>

From the 1970s through the mid-1990s, CRS analysts aided numerous major oversight efforts.<sup>57</sup> Some grabbed headlines, such as the Watergate and the White Water investigations.<sup>58</sup> Most were less news-making, such as congressional hearings on government reorganization, budget process reforms, intelligence agency oversight, legislative and line-item vetoes, government reorganization, and whistleblower protection.<sup>59</sup> The agency’s reports very often were published by committees as part of hearings or stand-alone committee prints.<sup>60</sup> Congress also published CRS guides on how to conduct oversight.<sup>61</sup>

Harold Relyea, who worked at the agency for more than 30 years, began a lengthy relationship with the House Subcommittee on Foreign Operations and Government Information in 1973.<sup>62</sup> He reports:

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53. 2 U.S.C. § 166(d)(2), (3) (1999).

54. 2 U.S.C. § 166(d)(7) (1999).

55. 2 U.S.C. § 166(d)(4), (5) (1999).

56. CONG. RESEARCH SERV., ANNUAL REPORT OF THE CONGRESSIONAL RESEARCH SERVICE OF THE LIBRARY OF CONGRESS FOR FISCAL YEAR 1975 48 (Apr. 1976).

57. *See* Kosar, *supra* note 5.

58. *See id.*

59. CONG. RESEARCH SERV., ANNUAL REPORT OF THE CONGRESSIONAL RESEARCH SERVICE OF THE LIBRARY OF CONGRESS FOR FISCAL YEAR 1985, 1987, 1989, and 1995.

60. *See, e.g.*, CONG. RESEARCH SERV., RL21612 CC, MAIL SERVICE IN THE UNITED STATES: EXPLORING OPTIONS FOR IMPROVEMENT (Dec. 1995).

61. CONG. RESEARCH SERV., RL63104, CONGRESSIONAL OVERSIGHT: A “HOW-TO” SERIES OF WORKSHOPS (2000).

62. Steven Aftergood, *CRS Scholar Harold Relyea Retires*, FEDERATION OF AMERICAN SCIENTISTS: SECRECY NEWS (Feb. 4, 2009), [https://fas.org/blogs/secrecy/2009/02/harold\\_relyea/](https://fas.org/blogs/secrecy/2009/02/harold_relyea/).

The beginning assignment was in support of the panel's oversight hearings on the administration and operation of the Freedom of Information Act. Some of my CRS products for the Subcommittee ended up being published in the hearing transcripts. During the proceedings I sat on the dais with [CRS'] Sharon Gressle and charts of tabular data we prepared for the subcommittee. Later, I helped write two oversight reports of findings, which were issued for the panel by the parent House Committee on Government Operations. My working relationship with the subcommittee continued thereafter for the next 20 years.<sup>63</sup>

Louis Fisher, who was a CRS senior specialist from 1970 to 2006 spent seven months as the research director for the House select committee investigating the Iran-Contra affair.<sup>64</sup> Fisher's duty was to assess the various arguments proffered by the Reagan administration in defense of the constitutionality of its activities.<sup>65</sup> "Many of my arguments were included in the [committee's] final report," Fisher noted.<sup>66</sup>

This close partnership was good for both Congress and CRS. Overseeing the federal government, an immense, fantastically complex amalgamated organization, is difficult. Legislators and their staff appreciated receiving nonpartisan, knowledgeable assistance from individuals with long institutional memory.<sup>67</sup> CRS researchers, for their part, found it satisfying to use their advanced training to help Congress undertake important, consequential work.<sup>68</sup>

### III. THE ATROPHYING OF CRS' OVERSIGHT ROLE

During the 1980s, Congress changed in ways that eventually would affect CRS' role in oversight. Most fundamentally, Democrats' four

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63. E-mail from Harold C. Relyea, retired Specialist in American National Government, Cong. Research Serv., to author (Jan. 22, 2018) (on file with author).

64. LOUIS FISHER: CONSTITUTIONAL SCHOLAR, <http://www.loufisher.org/> (last updated 2015).

65. E-mail from Louis Fisher, retired Senior Specialist in the Separation of Powers, Cong. Research Serv., to author (Jan. 21, 2018) (on file with author).

66. *See id.*; Report of the Congressional Committees Investigating the Iran-Contra Affair, S. Rep. No. 100-216 (Nov. 17, 1987) <https://archive.org/stream/reportofcongress87unit#page/n7/mode/2up/search/fisher>.

67. Author experience and conversations with various CRS staff and CRS retirees from September 2003 to October 2014.

68. *Id.*

decade period of control of the two chambers ended.<sup>69</sup> The transformation began modestly when Republicans won a Senate majority in 1981.<sup>70</sup> Congress grew more acrimonious in the succeeding years as congressional Democrats investigated the administration on variety of issues, and drove many top appointees from office, including President Ronald Reagan's chief of staff and various cabinet officials.<sup>71</sup>

Congress itself, meanwhile, was racked with its own headline scandals. Two congressmen were censured for having sexual relationships with congressional pages, who were youths,<sup>72</sup> while other law-makers were caught accepting bribes and engaging in self-dealing.<sup>73</sup> Many, if not most, of these scandals implicated Democrats, and Republicans campaigned to tag Democrats as the party of entrenched corruption.<sup>74</sup> This campaign tactic succeeded, as the GOP won a majority in the House in 1995.<sup>75</sup>

An immediate consequence of the Gingrich revolution was diminishment of congressional capacity. The legislative branch shrank itself through significant reductions of House committees' staff and Government Accountability Office analysts. Congress also abolished its Office of Technology Assessment.<sup>76</sup> Civil servants whose job it was to assist Congress found themselves without jobs. Congress's cuts to GAO and its defunding of OTA were justified partly as a response to them being co-opted by congressional Democrats, a perspective that did not go

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69. See Ira Shapiro, *The Year the Senate Fell*, N.Y. TIMES (Jan. 6, 2010), <https://www.nytimes.com/2010/01/07/opinion/07shapiro.html>.

70. See *id.*

71. See, e.g., Bernard Weinraub, *Iran-Contra Hearings; Major Setback to Reagan and Party Seen*, N.Y. TIMES, July 17, 1987, at A3.

72. Steven V. Roberts, *House Censures Crane and Studts for Sexual Relations with Pages*, N.Y. TIMES (July 21, 1983), <https://www.nytimes.com/1983/07/21/us/house-censures-crane-and-studds-for-sexual-relations-with-pages.html>.

73. See, e.g., Dan Nowicki, *Keating Five Scandal Still Dogs McCain, 25 Years Later*, AZCENTRAL (Apr. 6, 2014, 12:06 AM), <https://www.azcentral.com/story/azdc/2014/04/06/keating-five-scandal-dogs-mccain/7328163/>.

74. See Congress & History Conference, *Partisan Politics and the Legacy of Newt Gingrich*, C-SPAN (June 16, 2017), <https://www.c-span.org/video/?430052-2/partisan-politics-legacy-newt-gingrich>.

75. *Id.*

76. See Tim LaPira and Herschel Thomas, *So What if Congressional Staff Levels are Declining?*, LEGBRANCH.COM (June 27, 2016), <http://www.legbranch.com/theblog/2016/6/27/so-what-if-congressional-staff-levels-are-declining>; Haley S. Edwards and Paul Glastris, *The Big Lobotomy: How Republican Made Congress Stupid*, WASH. MONTHLY (June/July/Aug. 2014), <https://washingtonmonthly.com/magazine/junejulyaug-2014/the-big-lobotomy/>.

unnoticed by CRS leadership and employees.<sup>77</sup> Fewer Hill staff also meant congressional offices increasingly turned to CRS to respond to emails and other communications from constituents.<sup>78</sup>

The end of Democratic congressional hegemony weakened the already limited incentives to conduct thorough, bipartisan oversight weakened further.<sup>79</sup> Since control of the either chamber was up for grabs every election, party leadership and legislators increasingly felt the need to play a short game and use oversight as a tool for battering the other party and protecting one's own.<sup>80</sup> More hearings became made for media and television events, and it became unremarkable for whichever party was in the minority to begin holding their inquiries and commissioning their own reports of misdeeds.<sup>81</sup>

Today, Congress holds fewer substantive, bipartisan hearings, so CRS has fewer opportunities to engage in long-term engagements to support oversight.<sup>82</sup> As noted above, former CRS experts frequently helped committees produce their oversight reports. That seldom happens today, not least because committees rarely produce reports after conducting hearings. A similar decay has affected CRS' statutory partnership with Congress to identify oversight issues for each new Congress. What once was a plan produced by CRS and committees for examining the executive branch has devolved into an effort where CRS lists "issues for Congress" on the agency's website.<sup>83</sup>

CRS also became more cautious about approving details to committees. Part of this disposition was due to the agency's fear that any oversight assistance might give the appearance that CRS was aiding one

77. Steve Aftergood, *CRS Director's Retirement Renews Old Questions*, FEDERATION OF AMERICAN SCIENTISTS: SECRECY NEWS (Jan. 24, 2011), [https://fas.org/blogs/secrecy/2011/01/crs\\_retirement/](https://fas.org/blogs/secrecy/2011/01/crs_retirement/); see also Kevin R. Kosar, *The Struggle Between Objectivity vs. Neutrality Continues at the Congressional Research Service*, LEGBRANCH.COM (Feb. 13, 2018), <http://www.legbranch.com/theblog/2018/2/11/the-struggle-between-objectivity-vs-neutrality-continues-at-the-congressional-research-service>.

78. Electronic communications to Congress have skyrocketed. CONG. RESEARCH SERV., RL34458, *FRANKING PRIVILEGE: MASS MAILINGS AND MASS COMMUNICATIONS IN THE HOUSE, 1997-2015*, <https://www.everycrsreport.com/reports/RL34458.html>.

79. See generally FRANCES E. LEE, *INSECURE MAJORITIES: CONGRESS AND THE PERPETUAL CAMPAIGN* (2016).

80. *Id.*; see Tevi Troy, *Reclaiming the Congressional Hearing*, NAT. AFF. (Fall 2015), <http://www.nationalaffairs.com/publications/detail/reclaiming-the-congressional-hearing> (discussing hearings as blood sport).

81. See Troy, *supra* note 80.

82. Jonathan Lewallen et al., *Congressional Dysfunction and the Decline of Problem Solving* (unpublished manuscript), [https://law.wayne.edu/lewallen\\_theriault\\_jones\\_congressional\\_dysfunction\\_working\\_paper.pdf](https://law.wayne.edu/lewallen_theriault_jones_congressional_dysfunction_working_paper.pdf).

83. Author experience between 2003 and 2014.

party or another. Hence, requests for lengthy stints supporting committees were given rigorous review by CRS' front office and their length negotiated to the least possible time.<sup>84</sup>

Another factor in CRS' reduced role in oversight is more elemental: the agency's cohort of employees has declined, leaving fewer staff to answer the myriad congressional requests.<sup>85</sup> Since 2006, the agency's budget has been largely flat, and has actually fallen relative to inflation, while its per capita employment costs have risen.<sup>86</sup> But the staffing problem goes way back. One CRS employee lamented:

The salient point about CRS staffing is that it reached a peak of 893 in 1984, reflecting its newly expanded research mission, and has gone steadily down since then, to about 593 today—a loss of 300 people (about 33%), or an average loss of about 9 people per year for more than 30 years. [In the 1980s] CRS was able to spend time researching answers to complex policy questions. Today, CRS can identify those questions for Congress, but has much less available capacity to spend time researching answers to them.<sup>87</sup>

CRS has also hurt its own capacity to assist in oversight through its hollowing out of its corps of senior specialists. Perhaps a half-dozen staffers currently hold the title, down from a couple dozen.<sup>88</sup> The statutory authorization for CRS to appoint senior specialists—with deep subject area expertise—increasingly has been used to hire agency managers who seldom if ever directly assist Congress.<sup>89</sup> Whether CRS has done this to use the highly compensated position as a vehicle for

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84. *Id.*

85. See Curtlyn Kramer, *Vital Stats: Congress Has a Staffing Problem Too*, BROOKINGS (May 24, 2017), <https://www.brookings.edu/blog/fixgov/2017/05/24/vital-stats-congress-has-a-staffing-problem-too/>.

86. According to appropriation reports posted at EveryCRSReport.com CRS's budget in FY2006 was \$101.9 million; it was \$108 million in FY2017. CONG. RESEARCH SERV., RL32819, LEGISLATIVE BRANCH: FY2006 APPROPRIATIONS (Aug. 30, 2005), <https://www.everycrsreport.com/reports/RL32819.html>; CONG. RESEARCH SERV., R44515, LEGISLATIVE BRANCH APPROPRIATIONS: FY2017 (June 13, 2017) <https://www.everycrsreport.com/reports/R44515.html>. A simple CPI calculation indicates Congress would have needed to appropriate \$124.8 million in FY2017 to equal the \$101.9 million appropriated in FY2006. See CPI INFLATION CALCULATOR, <https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=101.90&year1=200601&year2=201701> (last visited May 5, 2018).

87. Email from CRS employee to author (May 31, 2017) (on file with author).

88. See CONG. RESEARCH SERV., *supra* note 15, at 51–53.

89. *Id.* at 55.

hiring and keeping non-researchers or whether CRS simply wants fewer specialists who are largely free from agency head direction is unclear.<sup>90</sup>

#### IV. CONCLUSION

Congress established CRS to assist committees with oversight. Its statutory duties to individual legislators, meanwhile, are few. It is ironic, then, that today the great glut of CRS' work is responding to individual legislator office requests—not helping conduct oversight.

This development is unfortunate. Democratic republics need expertise to function well. Professor Tom Nichols has observed: “[T]here are simply not enough hours in the day for a legislator, even in a city council or small US state . . . to master all of the issues modern policymaking requires.”<sup>91</sup> This is why nonpartisan experts are critical: their job is to study particular issues and areas and to inform elected officials.<sup>92</sup> In our national legislature, that expertise is supposed to reside in congressional committees, which were given power to develop policy and oversee its implementation.<sup>93</sup>

The atrophying of the partnership between CRS and Congress to conduct oversight is not a hopeless situation. It could be remedied. To start, CRS agency leadership could devote more time to develop trusting relationships with the chairmen and ranking members of the committees that are not excessively polarized. Thereafter, the agency could propose a bipartisan plan to each committee to provide legislative support to both the majority and minority staff over multiple months on a topic of bipartisan interest. With understaffed committees desperate for help, particularly in the House, this could prove an inviting proposition, and might help foster better relations within committees.

Concurrently, CRS could develop the case for Congress to provide funding dedicated to hiring more senior specialists. There are numerous past instances where CRS experts provided superb, long-term support for major initiatives, and the agency should produce short case studies explaining these.<sup>94</sup> CRS then could conjoin its hiring of new senior

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90. Typical CRS positions are capped at GS-15 or below. The senior specialist is a GS-17 position. 2 U.S.C.A. § 166 (West 2012).

91. TOM NICHOLS, *THE DEATH OF EXPERTISE: THE CAMPAIGN AGAINST ESTABLISHED KNOWLEDGE AND WHY IT MATTERS* 12 (2017).

92. *Id.* at 219.

93. *See generally* DAVID ROSENBLUM, *BUILDING A LEGISLATIVE-CENTERED PUBLIC ADMINISTRATION: CONGRESS AND THE ADMINISTRATIVE STATE, 1946–1999* (2002).

94. Turnover of staff and legislators in Congress is significant, and many in Congress likely are unaware what major engagements CRS has done for particular committees in the past.

specialists to the expressed policy area interests of committees with whom the agency has a strong relationship.<sup>95</sup>

Certainly, reasserting CRS important role in oversight will not be easy. Polarization, tight budgets, and congressional staff demand for help on constituent issues are unlikely to abate much. But the law is the law, and it is good for Congress, good for CRS staff, and good for the public to have nonpartisan experts more frequently and more deeply engaged in oversight.

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95. *E.g.*, if the Senate Homeland Security and Governmental Affairs Committee says it would like to increase its oversight of the financially troubled U.S. Postal Service, CRS might aim to hire a senior specialist who is an expert in that issue area.