

Written testimony of Kevin R. Kosar
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Before the U.S. House of Representatives
Select Committee on the Modernization of Congress
January 14, 2020

Thank you, Chairman Kilmer, co-chairman Graves and members of the Select Committee for holding this hearing and receiving my testimony.

I am vice president of research partnerships at the R Street Institute, and I co-direct the Legislative Branch Capacity Working Group, a monthly bipartisan gathering of scholars, congressional staff and folks who care about the well-being of Congress.

I was invited here to discuss congressional capacity, particularly the staffing aspect of congressional capacity.

In summation, the evidence of insufficient congressional capacity is substantial. Demands upon Congress have grown immensely over the past century, and Congress has actually divested in its capacity over the past 40 years. In tandem, these divergent trendlines all but ensure that Congress will fall short of the expectations of legislators, staff and the public.

Congressional capacity defined

To understand congressional capacity, it is useful to think about Congress in its broadest terms: It is an organization of individuals, established to achieve particular goals. These goals, as I discuss below, are myriad.

Like any organization—a charity or a restaurant, for example—Congress’ performance is greatly, but not entirely, affected by its capacity.¹ It can only do as much as it is capable of doing.

In the congressional context, capacity can be defined as “the human and physical infrastructure Congress needs to resolve public problems through legislating, budgeting, holding hearings, and conducting oversight.”² Some specific aspects of congressional capacity are: intra-chamber organization (e.g., committee organization), processes for allocating resources (e.g., the leadership selection process), processes for executing tasks (e.g., how bills go to the floor) and people. Central to congressional capacity are the people who work in the chambers, legislators and staff—the people whose efforts produce governance.

¹ To be clear, what gets done by Congress is affected by other factors. Partisan polarization, for example, has made enacting legislation more difficult. Additionally, the priorities of legislative leadership also drive outputs. The Senate, for example, has chosen to spend significant floor time approving nominees—especially judicial ones—in recent years. Time spent on one output (nominees) detracts time that can be spent on others (legislation).

² Timothy LaPira, Lee Drutman and Kevin Kosar, “Overwhelmed: An introduction to Congress’ capacity problem,” in *Congress Overwhelmed: Congressional Capacity and Prospects for Reform* (University of Chicago press, 2020), ch. 1. One benefit of thinking about Congress in terms of capacity is that it helps clarify whether underperformance is a product of insufficient organizational factors (e.g., insufficient time or processes that inhibit prompt action) or other factors.

Congress' job has grown immensely

The U.S. Constitution established Congress as the First Branch, the fountain of all lawmaking authority and governmental action. It assigned the national legislature a leading role in achieving the great ends of government, which are to “form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity.”³

The Constitution gives our national legislature many powers to achieve these broad goals, such as the authority to regulate commerce and declare war.⁴ With these powers comes the authority to delegate them but also the responsibility to oversee their use. Let's not forget that the national charter also assigns specific duties to each chamber. The House has to be the source of all revenue bills, and the Senate has to consider nominations for certain executive branch and judicial branch vacancies.

Various statutes have given Congress still more work to do. The Congressional Budget and Impoundment Control Act of 1974, for example, directs Congress to complete a budget resolution by April 15 each year and finish the annual appropriations and reconciliation process by June 30.⁵

In addition, obviously, Congress must respond to the diverse demands of their constituencies, be they for public policy solutions, constituent services or tours of the Capitol Dome. Donors, interest groups and media can be particularly demanding of legislators and their staff.

Finally, our national legislature exists in a system of separate branches that contend for power. When a president acts or the judiciary rules, Congress might need or be expected to respond.

All of this to say that from the earliest days of the Republic, Congress has had a large role in governance of the country, and the duties and demands on Congress have increased immensely ever since. Government has become much larger, and governing much more complex.

In the past four decades, the U.S. population has increased by one-third and federal spending has increased sevenfold.⁶ Today, the U.S. government has more than 4 million civilian and military employees, and an annual budget in excess of \$4 trillion.⁷ The executive branch has around 180 agencies, which administer untold thousands of statutes and programs.⁸ The U.S. government also funds, and to a degree directs, hundreds of thousands of contractors and subnational organizations.⁹ Public policy has become much more complex. For example, the landmark

³ U.S. Constitution, preamble. <https://www.archives.gov/founding-docs/constitution-transcript>.

⁴ U.S. Constitution, Article 1, Section 8. <https://www.archives.gov/founding-docs/constitution-transcript>.

⁵ 2 U.S.C. §631.

<https://uscode.house.gov/view.xhtml?req=%22congressional+budget+process%22&f=treesort&fq=true&num=2&hl=true&edition=prelim&granuleId=USC-prelim-title2-section631>.

⁶ Adam Chan, “The congressional tendency to cannibalize itself,” LegBranch.org, July 19, 2016.

<https://www.legbranch.org/2016-7-18-the-congressional-tendency-to-cannibalize-itself/>.

⁷ Congressional Research Service, Federal Workforce Statistics Sources: OPM and OMB, Oct. 24, 2019, table 3. <https://www.everycrsreport.com/reports/R43590.html>; and Office of Management and Budget, President's Budget FY2020, historical tables, table 1.1. <https://www.whitehouse.gov/omb/historical-tables/>

⁸ Kevin Kosar, “How to strengthen Congress,” *National Affairs*, Fall 2015.

<https://www.nationalaffairs.com/publications/detail/how-to-strengthen-congress>.

⁹ John Diulio, “Facing up to big government,” *National Affairs*, Spring 2012.

<https://www.nationalaffairs.com/publications/detail/facing-up-to-big-government>. Diulio reports the

Elementary and Secondary Education Act (ESEA) of 1965 was 32 pages long.¹⁰ The No Child Left Behind Act (NCLB) of 2002, which reauthorized the ESEA, was 670 pages long.¹¹ The regulations that interpret and apply statutes are even more voluminous: The *Code of Federal Regulations*, the corpus of existing regulatory law, runs more than 180,000 pages.

Bigger government and increased spending have encouraged increased demands from citizens, and have fomented the formation of interest groups, lobbies and influential donors—all of whom make time-consuming demands upon Congress.¹²

Meeting these expanding demands and duties is inherently challenging. Legislators and staff face an immense learning curve upon entering Congress, one they struggle to get around for years.¹³ The immense demands to understand so much so quickly leave them feeling as if they are forever “drinking from a fire house.”

A private sector firm faced with the same challenge would expand its capacity. Not least, it would expand its staff cohort to ensure it could handle an escalating workload. But Congress has done much the opposite over the past thirty years.

Congressional capacity, particularly in the form of staffing, has declined

In the 1940s and early 1970s, Congress grew the legislative branch. It reorganized its internal structure and operations, increased its committee and personal office staffing, expanded its legislative branch support agencies (e.g., the Congressional Research Service, the Government Accountability Office) and created new support agencies (the Congressional Budget Office and the Office of Technology Assessment).¹⁴

Despite escalating demands and duties, Congress has invested little in its own capacity since the 1990s. Total FY2019 spending on the legislative branch was about \$4.8 billion, less than 1 percent of total federal spending. In constant dollars, that is less than the sum appropriated for Congress a decade ago (\$5.4 billion in FY2010).¹⁵

Department of Defense relies on 710,000 contractors, while the federal Head Start program is administered by 200,000 state, local and private-sector employees.

¹⁰ P.L. 89-10; 79 Stat. 27. <https://federaleducationpolicy.wordpress.com/2011/02/19/1965-elementary-and-secondary-education-act/>.

¹¹ P.L. 107-110; 115 Stat. 1425. <https://federaleducationpolicy.wordpress.com/2011/02/19/2002-no-child-left-behind-act-of-2001/>.

¹² Timothy LaPira, Drutman and Kosar, *Congress Overwhelmed*, ch. 1.

¹³ E.g., when a legislator or staff member moves to a new committee, he or she will have to learn new issues.

¹⁴ Historical congressional staffing data may be found in the Brookings Vital Statistics on Congress, ch. 5, tables 1 and 2. <https://www.brookings.edu/multi-chapter-report/vital-statistics-on-congress/>. Background on legislative branch reorganization may be found in Kevin Kosar, “The atrophying of the Congressional Research Service’s role in oversight,” *Wayne Law Review* 64:109 (2018).

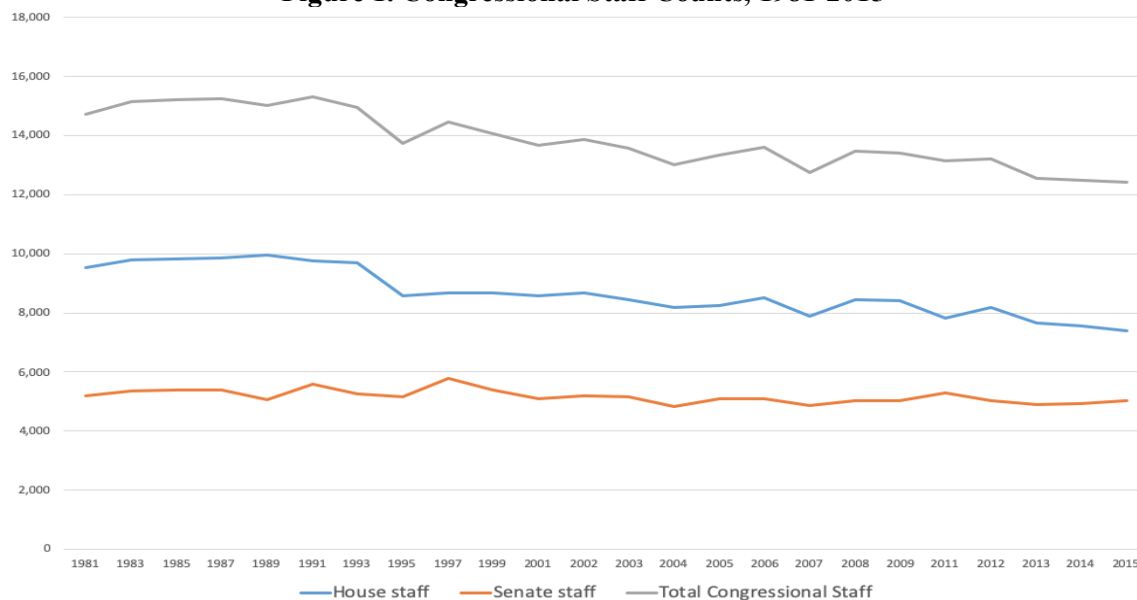
<https://www.legbranch.org/app/uploads/2018/11/Kosar-CRS-Oversight-Wayne-Final-08-2018.pdf>.

¹⁵ Congressional Research Service, Legislative Branch: FY2020 Appropriations, Nov. 12, 2019, p. 7. https://www.everycrsreport.com/files/20191112_R45755_f28e6ca5162fbc5ee069c3806131eff66b13dd5a.pdf

Figure 1 shows the total congressional staff count and the tallies by chamber.¹⁶ Total staff between the two chambers peaked at 15,321 in 1991 and fell nearly 19 percent to 12,436 in 2015.

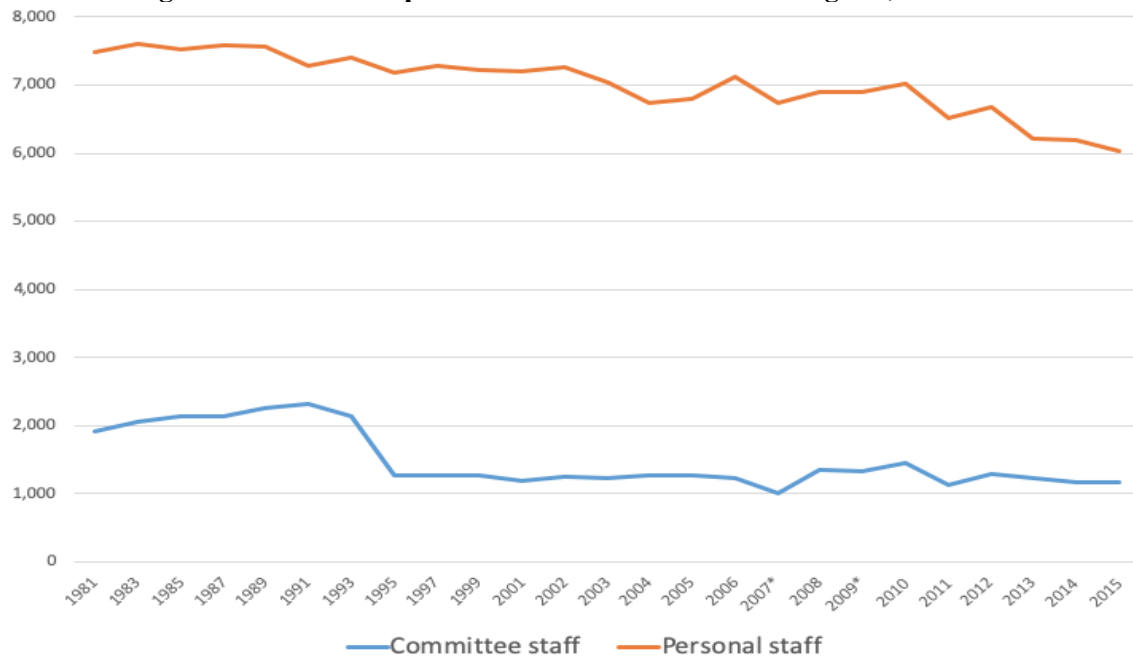
The decline was particularly acute in the House (**Figure 2**). Personal staff peaked at 7,606 in 1983 and numbered 6,030 in 2015, a reduction of nearly 21 percent. House committee staff hit 2,321 in 1991, and fell about 50 percent to 1,164 by 2015 (**Figure 3**). Leadership offices in both chambers, meanwhile, increased their staff levels significantly (**Figure 4**). House leadership staff grew 58 percent (127 staff to 201 staff) and the Senate expanded its leadership staff cohort 63 percent (106 staff to 173).

Figure 1. Congressional Staff Counts, 1981-2015



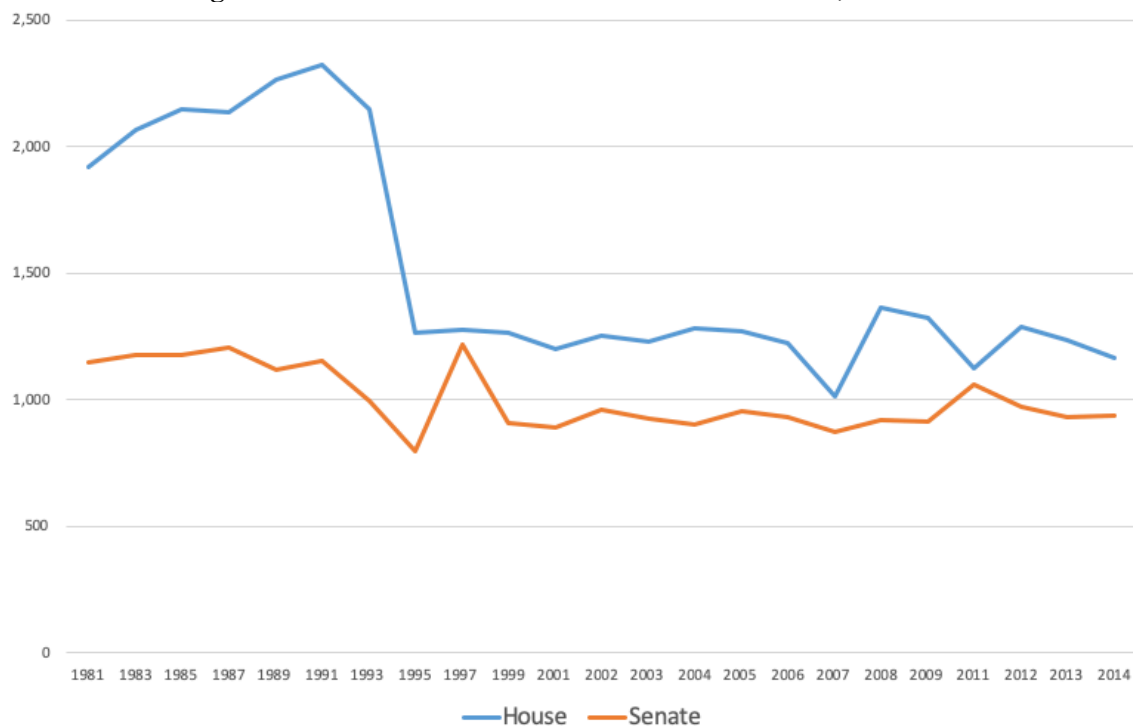
¹⁶ Total staff includes House and Senate personal, committee and leadership staff. It excludes chamber officers (e.g., clerks) and joint committee staff.

Figure 2. House of Representatives Staff Counts in Congress, 1981-2015

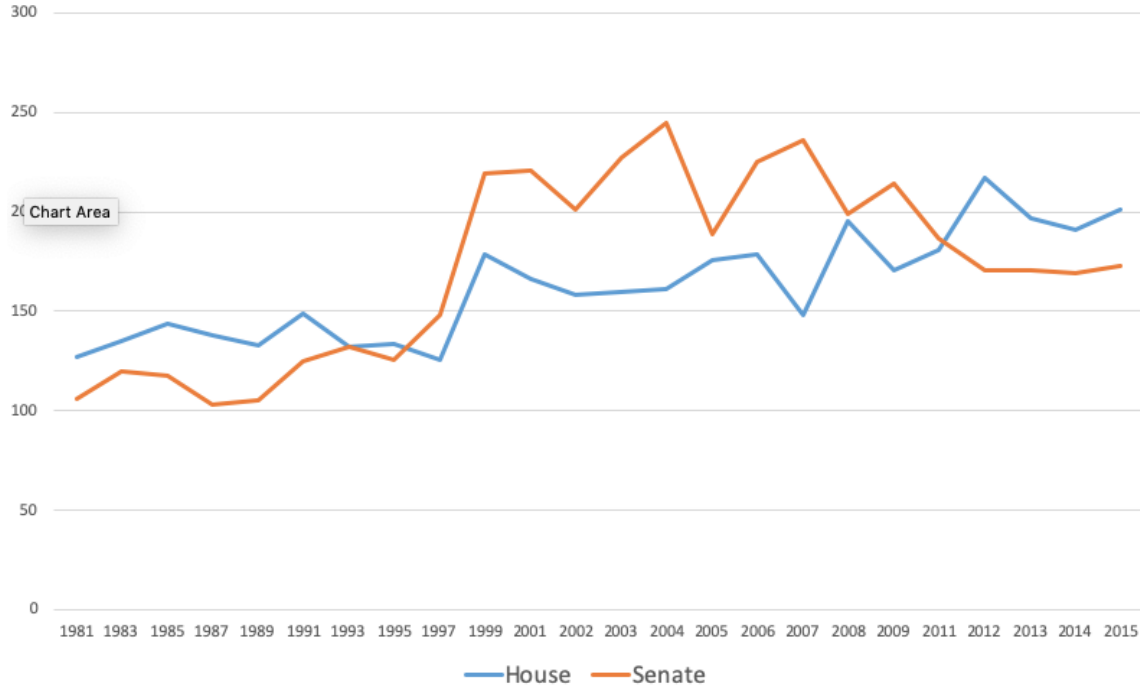


Date source: Brookings Vital Statistics on Congress.

Figure 3. House and Senate Committee Staff Counts, 1981-2015



Date source: Brookings Vital Statistics on Congress.

Figure 4. House and Senate Leadership Offices Staff Counts, 1981-2015

Date source: Brookings Vital Statistics on Congress.

It is worth noting that the loss of committee staff capacity is particularly problematic. Committees long have been the engines of policymaking in Congress.¹⁷ Many—but not all—committees have seen their staff levels decline and experience significant turnover.¹⁸ For example, the House Oversight and Government Reform Committee, which has government-wide oversight jurisdiction, has experienced a 30 percent reduction in staff since 2001.¹⁹ The median staff tenure on the House Homeland Security Committee is 3.4 years.²⁰

The effects of these reductions in congressional staff might have been mitigated by increasing the staff working at legislative branch support agencies, but they were not. Congress cut the total staff count of the support agencies 40 percent (6,379 to 3,833), and the Office of Technology Assessment was abolished in 1995 (**Figure 5**).

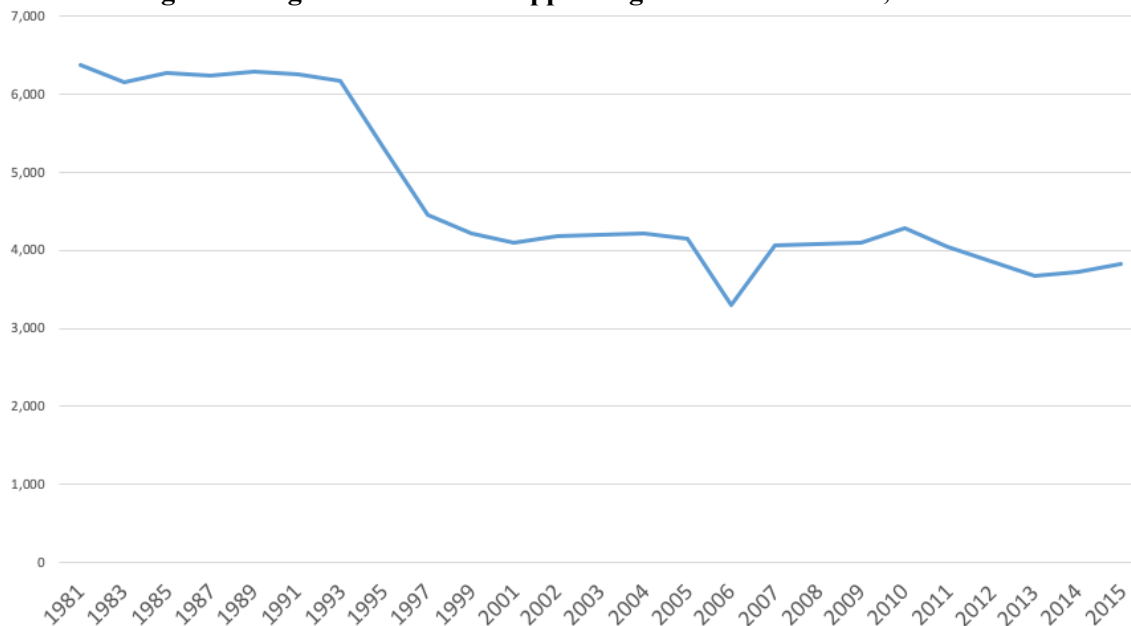
¹⁷ Woodrow Wilson, *Congressional Government: A Study in American Politics* (Houghton Mifflin, 1885); and Kenneth A. Shepsle, “The Changing Textbook Congress,” in John E. Chubb and Paul E. Peterson, *Can the Government Govern?* (Brooking Institution press, 1989), ch. 10.

¹⁸ One factor driving staff turnover is the disparity between legislative branch and private sector compensation. Casey Burgat, Written testimony Before the House of Representatives Legislative Branch Appropriations Subcommittee, April 2, 2019, p. 2. <https://docs.house.gov/meetings/AP/AP24/20190402/109212/HHRG-116-AP24-Wstate-BurgatC-20190402.pdf>

¹⁹ Casey Burgat and Ryan Dukeman, Who’s on the Hill? Staffing and Human Capital in Congress’s Legislative Committees, R Street Institute, March 2019, p. 8. <https://2o9ub0417chl2lg6m43em6psi2i-wpengine.netdna-ssl.com/wp-content/uploads/2019/03/Committee-Report.pdf>

²⁰ Casey Burgat, Congressional Undersight, *R Street Policy Study* No. 188, R Street Institute, November 2019, p. 4. <https://www.legbranch.org/app/uploads/2019/11/Casey-Burgat-Congress-and-foreign-policy-11-12-2019.pdf>

Figure 5. Legislative Branch Support Agencies Staff Counts, 1981-2015



Date source: Brookings Vital Statistics on Congress.

As the members of the Select Committee on the Modernization of Congress no doubt recognize, congressional staff matter. Functionally, the chambers could not operate without them. It is they who execute tasks that vary from opening constituent emails to meeting with legislative counsel to drafting legislation and resolutions.

Beyond simple manpower, staff are sources of information, expertise and advice for legislators and committees. Staff also provide legislators with Hill connections, an important factor in building support for legislative actions. Unsurprisingly, legislators who employ more experienced staff tend to be more effective lawmakers.²¹

The below-market-rate pay and strenuous conditions on the Hill have taken a toll. A 2017 survey of staff indicates that about two-thirds intend to leave the Hill within five years.²²

The diminution of congressional staff counts has specific negative effects, including:

1. Congressional committees' ability to oversee the executive branch has diminished because there are fewer staff able to oversee growing government. For example, the House and Senate Committees on Homeland Security employ approximately 133 policy aides, who are responsible for overseeing activities carried out by more than 240,000

²¹ John McCrain, "Convincing evidence that congressional staff do, in fact, matter," *LegBranch.org*, Jan. 23, 2018. <https://www.legbranch.org/2018-1-16-convincing-evidence-that-congressional-staff-do-in-fact-matter/>; and Alan E. Wiseman and Craig Volden, "Memo: Staff recruitment, retention, compensation and benefits; and chair term limits," *LegBranch.org*, Oct. 16, 2019. <https://www.legbranch.org/memo-staff-recruitment-retention-compensation-and-benefits-and-chair-term-limits/>.

²² Alexander C. Furnas et al., "The congressional capacity survey," in *Congress Overwhelmed: Congressional Capacity and Prospects for Reform*, ch. 6.

- Department of Homeland Security staff and 500,000 U.S. Postal Service employees, among other oversight responsibilities.²³
2. Congressional committees' capacity to produce legislation also has declined due to fewer staff with shorter tenures.²⁴
 3. Legislators' personal offices now are allocating more staff to communications and constituent service duties. Even staff who are supposed to work on policy frequently find themselves engaged in communications work.²⁵ While communications are important, this shift effectively reduces personal office capacity for policymaking.
 4. Lobbyists have proliferated, and about 40 percent of them are former congressional staff. Lobbying today is a nearly \$3.5 billion industry, which is about the same as the combined funding of the House, Senate and legislative branch support agencies.²⁶ The expansion of lobbying has exacerbated the unequal representation of interests.²⁷

There also is a more general effect. Power abhors a vacuum; therefore, the loss of congressional capacity means the executive branch's power over governance has grown, leaving our nation less a democratic republic.

Conclusion

Both our constitutional system and the public expect Congress to direct policy. Presently, all indications are that Congress does not have the capacity to execute its burgeoning responsibilities.

Thank you for your time and consideration. I would be happy to answer any questions the committee or its staff may have, and to respond to any questions for the record.

²³ Casey Burgat, Congressional Oversight, *R Street Policy Study* No. 188, R Street Institute, November 2019, p. 6. Another indicator of this is that Congress regularly does not reauthorize spending programs. In 2019, some 971 spending authorizations lapsed prior to the start of FY2019—which amount to \$307 billion in spending. Congressional Budget Office, “Expired and Expiring Authorizations of Appropriations: Fiscal Year 2019,” Washington, D.C., pp. 2-3. <https://www.cbo.gov/system/files/2019-03/55015-EEAA.pdf>

²⁴ Casey Burgat and Charles Hunt, “How Committee Staffers Clear the Runway for Legislative Action in Congress,” in *Congress Overwhelmed: Congressional Capacity and Prospects for Reform*, ch. 7.

²⁵ Alexander C. Furnas, “Legislative staff are spending an increasing amount of time on constituent services,” *LegBranch.org*, April 11, 2018. <https://www.legbranch.org/2018-4-11-legislative-staff-are-spending-an-increasing-amount-of-time-on-constituent-services/>.

²⁶ Lee Drutman et al., Modernizing congressional capacity, memorandum, Sept. 26, 2019, p. 11. <https://www.legbranch.org/app/uploads/2019/09/APSA-memo-capacity-subcommittee-report-09-2019.pdf>; and Congressional Research Service, *Legislative Branch: FY2020 Appropriations*, p. 8.

²⁷ Timothy M. LaPira and Hersche F. Thomas, *Revolving Door Lobbying: Public Service, Private Interests, and the Unequal Representation of Interests* (University of Kansas Press, 2017).