

May 23, 2018

Hon. Mitch McConnell
Majority Leader
United States Senate
S-230 Capitol Building
Washington, D.C. 20510

Hon. Chuck Schumer
Minority Leader
United States Senate
S-221 Capitol Building
Washington, D.C. 20510

Re: Congressional Accountability Act Reform

Dear Majority Leader McConnell and Leader Schumer:

As organizations committed to advancing and protecting civil and human rights, equality, access to justice, and transparency, we write to urge the Senate to swiftly pass H.R. 4924, the Congressional Accountability Act of 1995 Reform Act (“CAA Reform Act”), which was adopted by the House of Representatives with overwhelming bipartisan support more than 100 days ago. We also urge the Senate to pass a resolution that mirrors the administrative reforms in H.Res. 724, which includes important additional protections such as providing legal counsel for all individuals in the legislative workforce.

Although H.R. 4924 did not contain all of the protections we sought, it included many key principles and reforms, and represents an important starting point for Congress’s ongoing improvement of its internal processes and culture. We note that the House bill recognized that while the current moment of cultural reckoning is focused on sexual harassment, no one employed by the legislative branch should be subjected to harassment or discrimination on the basis of any protected characteristic. Congress has an obligation to ensure that any reform will apply to claims of *all* forms of workplace discrimination.

In particular, we strongly support measures holding members of Congress accountable by requiring members of Congress to personally repay settlements of all employment discrimination claims arising out of their individual behavior, not just settlements of sexual harassment claims, and have grave concerns about any legislative proposal that would allow members of Congress to evade the obligation to reimburse the Treasury for awards and settlements paid to resolve a discrimination claim arising out of their own behavior. As stewards of the public trust, accountable to constituents, lawmakers should not be allowed to avoid the cost of the harm they perpetrate.

Additional Guiding Principles

We understand that the Senate is negotiating new bill text instead of adopting H.R. 4924 and reiterate that the following principles (most of which were included in the House bill) must be met for meaningful reform that will create a safer and fairer legislative workplace.

- 1. Improve the Reporting and Dispute Resolution Process and Expand Coverage and Protections.**

The Congressional Accountability Act (CAA) must be amended to ensure the legislative branch workforce enjoys robust protection from and appropriate remedies for harassment and other forms of discrimination. Any reforms should ensure that:

- Protections against harassment and employment discrimination are extended to those not currently covered, including interns, fellows, detailees, and pages;
- Participation in mediation and counseling is optional and not a prerequisite to initiating a complaint or lawsuit;
- Nondisclosure agreements are neither a prerequisite to initiating a complaint nor a mandatory condition of settlement;
- No 30-day “cooling off” period is imposed before a complainant can file an administrative complaint with the Office of Compliance or file a lawsuit in U.S. District Court;
- Harassment and discrimination complainants are given meaningful advice and support through a legal counsel program;
- The Office of Compliance is provided new investigative and subpoena authorities in order to evaluate complaints in a prompt and thorough manner;
- Whistleblower protections are extended to all those covered by the CAA to include the rights and remedies enjoyed by most federal employees under the Whistleblower Protection Enhancement Act. Whistleblower protections should also provide the legislative workforce with access to a jury to challenge retaliation, rights against retaliatory investigations and prosecutions, and accountability for retaliators;
- If a retaliation claim should later arise, that retaliation claim relates back to the initial filing, meaning that complainants are not required to file a second formal complaint; and
- All notice-posting requirements regarding federal anti-discrimination, anti-harassment, and other workplace rights laws covered by the CAA are made applicable to the legislative branch, so that employing offices and staff are informed of their rights.

2. Ensure Greater Accountability and Increase Transparency.

Elected officials should be held to the highest ethical and professional standards and must be held accountable. Thus, it is critical that:

- Where taxpayer funds are used to settle a claim that a member of Congress has unlawfully harassed or discriminated against a legislative staff member, the member of Congress should personally reimburse the Treasury for funds expended on his/her behalf as expeditiously as possible; and

- Use of office funds to pay settlement amounts should be disallowed, and the number of settlements, settlement amounts, and the employing office should periodically be made public in a report that is transparent and accessible, while balancing the privacy and confidentiality of the complainants.

Moreover, because workplace harassment and discrimination encompass a range of actions, the Office of Compliance and leaders in Congress should develop guidelines that identify harassing and discriminatory conduct, the proportionate corrective actions and sanctions that may be assessed when violations are substantiated, and the process for doing so. These guidelines should be made available to the entire legislative workforce and the general public and should be consistently applied, thereby establishing expectations for behavior and promoting accountability for members of Congress and legislative branch staff.

3. Implement Comprehensive Prevention Practices.

Preventing workplace harassment and discrimination must be a top priority and goal of every member of Congress and leader in the legislative workforce. Those prevention practices should include the following:

- Every office should be required to have strong anti-discrimination and anti-harassment policies in place that help employees understand what prohibited conduct looks like; explain how to report harassment or discrimination within the office or to the Office of Compliance and provide multiple avenues for reporting; outline the process for investigating and responding to complaints; assure confidentiality; detail the consequences for harassment, discrimination and retaliation; and provide internal and external resources for support, including information about the role of the Office of Compliance.
- While codification of the annual mandatory sexual harassment training should be included in any CAA reform package, the training itself must do more than merely seek to ensure compliance with the law, and instead should help instill a culture of respect within the Congressional workplace; enable members of the legislative workforce to understand their rights and responsibilities; empower them to intervene in a situation or to report safely without retaliation; and most importantly, set out standards that will ensure that members of Congress and their staff do not engage in conduct that leads to a workplace culture that increases the likelihood of unlawful behavior.
- The creation and implementation of a regular, anonymous climate survey of the legislative workforce will help offices understand the true nature and scope of harassment and discrimination in Congress and any failures in the policies and procedures designed to prevent and address harassment and discrimination.

Finally, in order to ensure the changes outlined in this letter can achieve the stated goals of preventing and remedying harassment and discrimination in the legislative workforce, the Office of Compliance must have the additional resources, authorities, and access to staff and members of Congress needed to do its job effectively.

Conclusion

Despite the longstanding prohibitions against sexual harassment and sexual assault, these behaviors continue to infect our workplaces and deny individuals equal employment opportunities, safety, and dignity. For too long, victims of harassment and assault have lived in silence because of fear of jeopardizing their safety, jobs, financial security, and career prospects, while too often perpetrators -- often powerful men -- have escaped accountability for their actions, enabled by many who have turned a blind eye to these transgressions. As recent events have demonstrated, no workplace is immune from harassment, whether in the entertainment industry, restaurants, or the halls of Congress.

The bipartisan consensus is clear: it is long past time to reform the legislative workforce's reporting and dispute resolution process and the Senate must act thoughtfully but swiftly to ensure that meaningful remedies are available to legislative staff who experience workplace discrimination. Our organizations stand ready to assist you in any way that we can and look forward to working with you on this critical issue.

For questions please contact Vania Leveille at the American Civil Liberties Union (vleveille@aclu.org), Joi Chaney at Equal Pay Today (jchaney@tidescenter.org), June Zeitlin at The Leadership Conference on Civil and Human Rights (zeitlin@civilrights.org), Maya Raghu at the National Women's Law Center (mraghu@nwlc.org), and Remington A. Gregg at Public Citizen (rgregg@citizen.org).

Sincerely,

ACLU
Equal Pay Today
The Leadership Conference on Civil and Human Rights
National Women's Law Center
Public Citizen
9to5, National Association of Working Women
AAUW
Advocates for Youth
Affiliation of Christian Engineers
Alianza Nacional de Campesinas
Alliance for Justice
American Atheists
American Federation of State, County, and Municipal Employees (AFSCME)
American Federation of Teachers
California Women's Law Center
Center for Justice & Democracy
CenterLink: The Community of LGBT Centers
Citizens for Responsibility and Ethics in Washington

Coalition of Labor Union Women
Consumer Action
Consumers for Auto Reliability and Safety
Demand Progress Action
Equal Rights Advocates
Equality California
Family Equality Council
FORGE, Inc.
Futures Without Violence
GLMA: Health Professionals Advancing LGBT Equality
Government Accountability Project
Government Information Watch
GovTrack.us
Human Rights Campaign
Indivisible
Lambda Legal
Legal Momentum, The Women's Legal Defense and Education Fund
MANA, A National Latina Organization
NAACP
National Advocacy Center of the Sisters of the Good Shepherd
National Alliance to End Sexual Violence
National Asian Pacific American Women's Forum (NAPAWF)
National Black Justice Coalition
National COSH
National Council of Jewish Women
National Employment Law Project
National Employment Lawyers Association
National Equality Action Team (NEAT)
National Judicial Conduct and Disability Law Project, Inc.
National Medical Malpractice Advocacy Association
National Organization for Women
National Partnership for Women & Families
National Whistleblower Center
New Order National Human Rights Organization
OutServe-SLDN
Senior Executives Association
Service Employees International Union (SEIU)
Sikh American Legal Defense and Education Fund
Southwest Women's Law Center
The Multiracial Activist

UltraViolet
Union for Reform Judaism
URGE: Unite for Reproductive & Gender Equity
Women Employed
Women of Reform Judaism
Women's All Points Bulletin, WAPB
Women's Law Project

cc: Members of the United States Senate