

Written Testimony
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Modernization of Congress
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Chair Kilmer, Vice Chair Graves, and members of the committee:

Thank you for the invitation to testify on civility, collaboration, and bipartisanship in Congress. As you know, these topics are central to the function, or dysfunction, of American democracy. I appreciate the opportunity to share the Bipartisan Policy Center's analysis and recommendations.

My remarks today address three themes:

- 1) **Relationships matter.** The Congress is not going to return to the days when members and their families lived in D.C. and forged personal relationships based on common interests (like regular people.) If we want Congress to have the deliberative capacity to resolve real differences, we must develop practical opportunities to build relationships that mesh with the myriad demands on a member's time.
- 2) **Incentives matter.** There are significant electoral incentives that drive members toward ideological rigidity. We must create countervailing incentives that encourage and enable governing. Re-empowering congressional committees and restoring a responsible system for congressionally directed spending are two opportunities that would make a meaningful difference.
- 3) **Rules Matter.** Congress has adopted a series of well-intentioned rules that have weakened its deliberative capacity. Congress should seek to modernize aspects of its ethics rules that are hindering engagement with one another.

Summary

In legislative politics, civility and bipartisanship do not exist to serve some abstract notion of polite behavior. Rather, these qualities are essential for Congress to effectively govern a politically divided nation. If we want a functional democracy, we must spend less time lamenting our divisions and focus our attention on practical opportunities to strengthen our deliberative institutions.

There are strong headwinds buffeting our democracy today. Low-turnout primary elections hand decision-making authority to strongly ideological segments of the electorate. Geographic

sorting by political beliefs driving an organic gerrymandering that feeds regional division and alienation. Disaggregated media successfully stokes the respective party bases. These are all real challenges that demand solutions. In the meantime, Congress has an obligation to govern a divided nation.

Harsh differences and polarization are not new themes in American democracy. What is new, is Congress' diminished capacity to manage these challenges. Twenty years ago, Congress was far from a halcyon era of placid cohesion. During the Clinton Administration strident partisanship and the politics of personal destruction fueled political disarray. The federal government was shut down for weeks on end. The House of Representatives impeached the president. Yet, despite the rancor, the legislative and executive branch continued to work together to advance meaningful legislation—in fact, within three weeks of his impeachment, President Clinton was signing bipartisan legislation into law. In the 106th Congress, while the Clinton impeachment proceedings careened through the legislative branch, 580 public laws were enacted. Thus far, the current Congress has only enacted 56 public laws.

What has changed? The culture of collaboration that once steeled American democracy against division has eroded. Long gone are the days when Republican and Democratic families attended the same social events, when their kids went to school together, or when they took substantive bipartisan trips to form a common understanding of challenging issues and one another. Instead, lawmakers are functionally discouraged from forming the personal cross-partisan bonds necessary for a healthy legislative process. It is now a badge of honor to sleep on your office couch and take the first flight back home to prove that you are not a swamp dwelling Washington insider.

Even the shuttle buses at orientation for freshman members of Congress are divided between Republicans and Democrats. Caucus meetings and policy lunches are conducted along purely partisan lines. Congressional committees, which traditionally have been engines of democracy and the place where members work together to build bipartisan bridges, have been systematically weakened as party leaders increasingly script and dictate major pieces of legislation.

Finally, in the past, congressionally directed spending served an important role in the functioning of the legislative process. The necessity of revisiting this basic congressional function has become acutely apparent amidst the persistent gridlock and dysfunction that have come to define the institution. Given the responsibility and power over spending that the Constitution specifically delegates to the legislative branch, it is both obvious and reasonable that Congress should exercise some control over the expenditure of money for important projects in members' congressional districts, subject to a carefully crafted set of rules and requirements. Moreover, the restoration of an effective system of congressionally directed spending will increase Congress' capacity to take on tough issues like deficit reduction that are critical to the national interest and often controversial with constituents.

I. Building Trust

In 2013, the BPC formed the Commission on Political Reform (CPR). Twenty-nine commissioners—including former Members of Congress, former governors, former cabinet secretaries, and more—conducted their work over the course of 18 months through field hearings across the country, exploring what might be done to change Congress to improve the governing climate. The proposals below are drawn from the Commission’s recommendations.

Planning Informal Bipartisan Gatherings

The joint leadership of the House of Representatives and the Senate each plan periodic, informal gatherings for their members. We recommend that events be centered on a particular theme or speaker to allow for more relationship-building across the aisle.

Reforming Congressional Scheduling

Congress should adopt a five-day workweek with a predictable number of weeks of session and district work periods in order to create a more regular cycle between time spent in Washington and time back home. This committee’s focus might extend to also examining how to maximize members’ time each day while they are in Washington. The House should consider a form of “block scheduling” where, for example, particular days, or even weeks, are devoted exclusively to committee work, and others to floor activity. On the subject of committee work, we recommend that committee assignments be decreased. With fewer committees to attend to, lawmakers can develop deeper policy expertise. This, in turn, will improve the deliberative and exploratory nature of committees.

Encouraging Bipartisan Trips

One of the most effective and practical opportunities to build shared knowledge and trust among members are bipartisan fact-finding trips. In recent years, these critical opportunities have been unfairly stigmatized as junkets. Congressional leadership, Committee chairs and ranking members must confront this characterization and actively encourage lawmakers to take educational trips together.

- 1) Congressional delegation (CODEL) trip participation should strike a closer balance between the parties. We recommend a party ratio of perhaps two-to-one, or even one-to-one, per trip.
- 2) Members should be encouraged to participate in programs such as BPC’s American Congressional Exchange, or ACE that provide insights about the priorities in different parts of the country.

ACE represents a systematic approach to strengthening Congress’s culture of collaboration. On ACE trips, a pair of members from both sides of the aisle visit one another’s districts for two or three days. Together, the members tour sites and attractions of local economic, military,

cultural or social significance and meet with civic, business, education, military, and faith leaders for substantive policy discussions.

By building bonds away from the crucible of Washington, D.C., participating members are able to return to the Capitol prepared to collaborate. Following their visits last year, Representatives Jack Bergman (R-Mi.) Stephanie Murphy (D-Fl.) jointly introduced legislation—later signed into law—to support returning service members as they reenter the civilian workforce.

Improving New-Member Orientation

Freshman orientation is an important series of events that set the tone for each new Congress. Regrettably, even orientation has become more partisan than in the past. BPC acknowledges and applauds the fact that this committee has, on a unanimous and bipartisan basis, recommended that new-member orientation be offered in a nonpartisan way. To achieve this goal, we offer two specific recommendations:

- 1) Disconnect party leadership elections from orientation proceedings. Party elections unnecessarily inject partisan tenor into what should be an opportunity for members to learn about the institution, meet their colleagues, and begin building relationships.
- 2) Implement ongoing orientation training and retreats that take place once new members have settled into office.

Fostering Bipartisan Staff Relationships

Finally, Congress must not overlook the importance of fostering bipartisan committee and member staff relationships. As we all know, staff at many levels are essential to mastering the details of policy issues, drafting and redrafting text, shepherding bills through the process, and ultimately supporting a negotiated agreement. Former Senator Tom Harkin, who served in the House for a decade, once described members of Congress as, “a constitutional impediment to the smooth functioning of staff.” In order to be effective and help members achieve their legislative goals, staff need the same cross-partisan relationships that members need. Yet there are even fewer opportunities for staff to form these relationships.

BPC and other organizations have attempted to fill this gap. For instance, BPC recently began two working series for Senate and House staff. One is for Senate legislative directors; the other is for newer House chiefs of staff and legislative directors. Both provide a forum to foster essential relationships, gain a deep appreciation of institutional issues, and pursue professional development opportunities.

II. Reforming Legislative Process to Improve Incentives for Collaboration

Americans embrace bipartisanship because they understand that legislation that reconciles ideological differences will amount to better and more resilient public policy. At its best, Congress is a place where constructive partisans are able creatively and collaboratively respond to the country's diverse interests. Rather than cursing the headwinds that rattle our democracy, we should focus on fortifying the structure that has withstood these stresses for centuries.

Empowering Congressional Committees

BPC firmly believes that restoring the important role of Congressional committees is critical to overcoming dysfunction. Committees have historically functioned as the engines of American democracy. They are where political beliefs and expertise can collide to produce solutions to pressing challenges. As a young Professor Woodrow Wilson wrote decades before becoming president, "Congress in session is Congress on public exhibition whilst Congress in its committee rooms is Congress at work." Today, however, the committee process is significantly less organic and collaborative than it should be.

There are several things Congress can do to reignite these engines of democracy. To analyze the problem and develop solutions, BPC has engaged with an advisory group comprised of former senior staff who served rank-and-file members, committees, and leadership. Our recommendations are as follows:

- 1) Committees should seek out more alternative formats to engage in fact finding, information gathering, and deliberation. Committees should be encouraged to do more roundtables, seminars, briefings, and other informal convenings outside of the public spotlight. Committees could also be encouraged to hold more field hearings or roundtables on a bipartisan basis away from Washington.
- 2) As noted earlier, the House should develop a scheduling system to reduce conflicts between potentially competing committee meetings, and between committee meetings and floor activity (especially votes) as much as possible.
- 3) The House should reinstate requirements that committees adopt oversight plans at the start of each Congress by vote, rather than simply requiring consultation of the ranking member by the chair.
- 4) Committees should meet informally at the beginning of each Congress to develop legislative and oversight agendas with opportunities for members from both parties to offer input.
- 5) Trainings and briefings for committee staff and the personal office staff of committee members should more regularly occur on a bipartisan basis.
- 6) Allow witnesses to be proposed on a bipartisan basis. This practice is already employed by some committees, and it should become more common.
- 7) Committee chairs should solicit the views of all committee members well in advance of a committee markup, and pay special attention to the minority members so that efforts

are made to incorporate as many of their suggested changes into the chairman's mark before the bill is marked up by the full committee.

Restoring Congressionally Directed Spending

Congressionally directed spending is another means to enhance Congress's ability to solve hard problems. The reasoning here is simple: the give and take that is often necessary to overcome entrenched differences is much harder if there is nothing to give and take. The constitutional prerogative for members to direct resources toward constituent priorities is not a begrudging "skid greasing" to be done in the shadows, but rather a core aspect of our democratic design that members of Congress should pursue openly, proudly and be held accountable for. Congress should rightly reclaim this legitimate legislative tool and establish a transparent and deliberative process that can regain the public trust.

The ability of a member of Congress to demonstrate her priorities, fight for the compelling interests of her constituents, and simply exhibit the ability to get something done is essential to the delicate balance that is the basis of our nation's stability and success. One of the many unique aspects of American democracy is the obligation of members to vote in the national interest while being elected by local interests. When people assert that members of Congress should have the courage to take "tough votes," what they are often calling for are votes that are critical for the country's future but likely to be unpopular with present constituents.

The simple truth is that no member of Congress gains local support for authorizing the use of military force or voting to increase the debt ceiling or reducing the growth of entitlement spending. Nonetheless, the country depends on Congress's ability to make responsible choices when facing these kinds of issues. The fact that congressionally directed spending creates investment in the legislative process and bipartisan engagement in the hard work of governing a divided country is not something to take for granted.

Re-Establishing a Congressional Science and Technology Advisory Entity

Evidence informed decision making is the bedrock of sound public policy. The topics Congress must engage can be incredibly complex. Congress must avail itself of the resources necessary for informed deliberation. A key opportunity is to strengthen and restore trusted entities that members can rely upon for expert and objective opinions. BPC applauds this committee's recent recommendation that Congress re-establish a congressionally-centered S&T advisory entity.

Such an entity could be based upon the former Office of Technology Assessment, or OTA, that advised members from 1972 to 1995. While S&T advisory functions currently exist within the legislative branch, they are insufficient to properly serve Congress's needs. Increasingly, Congress has relied upon outside sources. This trend brings with it a range of concerns about bias and expertise. Members have been left vulnerable while wrestling with complex subjects and the broad range of possible policies to address them. By re-establishing a re-structured

OTA, with critical enhancements and improvements, Congress can support lawmakers' understanding of rapidly-developing topics while promoting evidence-based decision-making.

Valuing Private Deliberation

To further reignite creativity and collaboration, lawmakers ought to reassert the importance of negotiating in private and presenting their agreements and explanations to the nation. To this end, BPC proposes allowing each house of Congress to meet — but not vote — with some regularity behind closed doors, in a bipartisan manner, with the cameras turned off. As I understand it, this committee has used a similar approach to great success.

It wasn't long ago that legislators in positions of influence were able to privately deliberate over items of real disagreement. As recently as the mid-1990s, the Senate's majority and minority leaders each had a phone on their desk that connected directly to the other. Regular interaction did not diminish the leaders' commitment to principle, nor their determination to win; it just meant that they sought, whenever possible, not to injure one another.

In recent sessions, Congress has adopted an aversion to privacy that has undermined lawmakers' mutual trust and derailed the legislative process. We must reverse this unproductive trend. To foster meaningful opportunities for collaboration and creativity, Congress must embrace the fact that transparency and privacy are partners, not enemies, in American democracy.

Guaranteeing Consideration to Bipartisan Amendments

Finally, Congress should continue to identify ways to incentivize bipartisan collaboration. This Congress implemented a consensus calendar aimed at making it easier for bills with strong bipartisan support to receive a floor vote. Congress could now consider creating a similar system for amendments, as both parties have expressed concern that they have become too restricted. Such a system would give guaranteed consideration to amendments with a certain level of bipartisan support.

III. Confronting Self-Inflicted Harms

Over the last several decades, Congress has imposed significant limits on campaign fundraising, substantially strengthened ethics laws, and tightly regulated congressional trips. One may naturally assume that these efforts to make Congress more ethical are unconditionally positive. Yet Americans are as dissatisfied as ever with how Congress is functioning. While not suggesting that Congress in any way diminish its commitment to ethical conduct and integrity, we must also honor the law of unintended consequences and take a hard look at the practical implications of some of these self-imposed constraints.

Here, are a few examples of regulations that are not working as intended:

1. Our ACE program is predicated on two members of Congress from opposite parties visiting each other's districts. However, due to ethics rules, BPC is prevented from working with the office of the member representing the host district to plan the itinerary of the trip that they are hosting. As you can imagine, this restriction makes it challenging to develop an agenda that captures the true nature of a district.
2. For similar reasons, members are effectively barred from traveling in the same car during ACE trips. This restriction prevents a key opportunity for the two members to get to know one another—a principle goal of the trips—in a very informal, non-public setting.
3. Members are not supposed to “unduly promote” the BPC or ACE as an outside organization. We do not lament or argue for any direct benefit to BPC, but the practical result of this restriction is that participating members are limited in their ability to recruit colleagues to the program, beneficial as they may have found it.
4. BPC recently sponsored a one-day event for members of the 115th and 116th classes in May 2019 at the Reserve Officers Association building across from the Capitol. The freshmen class presidents were eager to promote the event. However, because it was not on ‘campus’, members and staff were not able to use official resources such as computers, phones, dear colleague letters, photocopiers, or printers to inform colleagues of the event. These restrictions made it much more difficult to generate awareness and likely reduced participation. If it was held in the Capitol Visitor’s Center or in a House office building, then these restrictions would not obtain. However, the demand for these approved rooms far outpaces supply.

Reforming the Gift Restriction

Congress’s gift restriction presents another example of well-intentioned, but ultimately counterproductive, regulation. Prior gift limits, by almost any stretch, would have prevented lavish “free lunches” with lobbyists. By reducing the gift limit to zero, Congress has created confusing obstacles that discourage members of Congress and their staff from attending policy dinners and even receptions.

For instance, there is a regulation in force that is commonly known as the “toothpick rule.” In 2007, Congress added criminal penalties for providing food to a member of Congress that requires a fork and knife. This restriction applies not only to lobbyists, but also to anyone who works for a corporation or organization that employs a lobbyist. In essence, the restriction creates a distinction between the provision of “food” from the sharing of a “meal.” And that means that a reception where the attendees consume food or drinks standing up is considered acceptable, but at a point when the portions get too large, it is suddenly corrupting.

It is not difficult to see why these restrictions hinder the constructive functioning of Congress. At the BPC, we often host dinners with sitting members of Congress. These events are intended to foster candid, animated, and substantive conversations about policy issues. But when members come to dinner, they frequently run into a problem: they are not sure whether they are allowed to eat. There are ways to work around these restrictions; however, doing so is an unproductive use of time and energy.

Conclusion

Thank you for inviting me to testify on the subject of promoting civility, collaboration, and bipartisanship in Congress. Though Congress — and the country — face strong headwinds, there is a clear path forward. Members should be encouraged to develop relationships of mutual trust. Collaboration should be incentivized, not stifled. Rules and regulations should help, not hinder, substantive conversations and informed decision-making. Together, these recommendations form a plan to reignite Congress's capability to take on tough issues and act in the country's best interest.