

June 8, 2018

The Honorable Paul Ryan
Speaker
U.S. House of Representatives
H-232, The Capitol
Washington, D.C. 20510

The Honorable Nancy Pelosi
Democratic Leader
U.S. House of Representatives
H-204, The Capitol
Washington, D.C. 20510

RE: Coalition Letter Calling for a Conference Committee on the Congressional Accountability Act of 1995 Reform Act (H.R. 4924/S.2952)

Dear Speaker Ryan and Leader Pelosi:

We urge you to seek the appointment of a Conference Committee on the Congressional Accountability Act of 1995 Reform Act (H.R.4924/S.2952) in order to secure a final bill that contains the strongest protections against workplace harassment and discrimination within the legislative workforce.

We appreciate the bipartisan recognition in the House of Representatives and Senate of the need to strengthen protections against workplace harassment and discrimination in the legislative workforce and the effort that both chambers have made to address these workplace violations. However, we believe that the measures passed by the House in February – H.R. 4924 and H.Res.724 – provide greater transparency and accountability to the public and stronger protections for employees of the legislative workforce. We urge you to fight for a final bill that includes these critical protections.

A Conference Committee is needed to address key differences between the House and Senate bills on many issues but especially on the following priority issues:

Ensure transparency and accountability by removing the ethics committees' role in determining a Member's reimbursement obligations.

Members of Congress should be held to the highest ethical and professional standards and, as stewards of public trust, must be held accountable. The House bill achieves this goal clearly by ensuring that a Member will be personally liable for a monetary settlement or award arising out of his or her own harassing or discriminatory conduct. In addition, the House bill ensures that a Member will remain personally liable for the settlement or award even if he leaves Congress. While the Senate bill also provides for Member reimbursement of taxpayer funds, it establishes a wholly separate and vague process, under the auspices of the House and Senate ethics committees, to investigate a claim of Member harassment, establish a Member's personal liability, and require reimbursement of the settlement or award. In so doing, it provides a

loophole whereby Members can avoid having to reimburse the taxpayer for funds expended to settle harassment claims paid on their behalf.

Hold Members accountable to create and sustain a workplace free of unlawful discrimination.

The House bill demonstrates its commitment to ending discrimination in the workplace by holding Members personally liable for settlements and awards when the Member personally discriminated in the workplace based on sex, race, color, religion, national origin, age, or disability. However, the Senate bill limits Members' reimbursement obligations only to workplace harassment claims.

There is no sound basis for distinguishing between harassment and discrimination claims and such a distinction could lead to disturbing results. For example, under the Senate bill, if the ethics committee determined a Member terminated a female employee because she refused his sexual advances, the Member would be required to reimburse the U.S. Treasury. However, if a Member settled a claim that he wrongfully terminated a female employee because he believed, for example, that women with children should stay home, the Member would have no such reimbursement obligation. Member accountability must be a critical principle in all matters of unlawful workplace discrimination and harassment.

We also have serious concerns about the Senate's addition of the term "unwelcome harassment" to the definition of harassment, which could inadvertently create a new legal standard whereby Member liability for harassment could be limited. Harassment is never welcome and it should be removed from the final bill.

Provide meaningful legal support to members of the legislative workforce in order to ensure that their workplace rights are protected.

The House-passed CAA reform bill recognized the unequal power dynamic between employing offices (i.e., Members of Congress) that receive counsel from the taxpayer funded Office of Employment Counsel and the hardworking public servants in the legislative workforce who must fend for themselves when confronted with harassment and discrimination. The House-passed resolution addressed this significant hurdle and imbalance of power by providing legal counsel to individuals in the House workforce who file complaints of harassment or discrimination. The Senate has not yet passed a companion resolution. Instead, the Senate bill includes a provision for "confidential advisors," but expressly prohibits the advisor from providing legal advice to any individual who accesses this resource. And once an individual has filed a claim, the individual cannot access the confidential advisory for the remaining duration of the dispute resolution process, thus sharply limiting the value of the role. Every member of the legislative workforce should have the legal support provided by the House resolution.

Ensure that the dispute resolution process is fair and make mediation truly voluntary for members of the legislative workforce.

There is a strong bipartisan consensus that the CAA’s mandatory mediation requirement fails to protect the rights of victims of harassment or discrimination. Both bills rightly ended the practice of mandatory mediation because it is often unfriendly to claimants and perpetuates a system that is primarily protective of the institution rather than the rights of employees. This inequity is exacerbated by the lack of legal counsel for employees. While the House bill makes mediation completely voluntary, the Senate bill puts the burden on the employee to “opt out” within ten business days of filing a claim.

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For the first time in more than 20 years, Congress is poised to reform a dysfunctional process that has not met the needs of the legislative workforce nor promoted member accountability. We sincerely appreciate the serious work that has gone into developing two different bills and achieving bipartisan consensus in each legislative chamber. We urge the Senate and House of Representatives to continue on the bipartisan path towards progress and convene a Conference Committee in order to craft a final bill that contains the strongest protections against workplace harassment and discrimination within the legislative workforce.

If you need additional information, please don’t hesitate to 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), Emily Martin at the National Women’s Law Center (emartin@nwlc.org), and Remington A. Gregg at Public Citizen (rgregg@citizen.org).

Sincerely,

American Civil Liberties Union
Equal Pay Today
The Leadership Conference on Civil and Human Rights
National Women’s Law Center
Public Citizen
9to5
American Association of People with Disabilities
American Association of University Women (AAUW)
Anti-Defamation League
Atlanta Women for Equality
Bend the Arc Jewish Action
California Women’s Law Center
Center for American Progress

Congregation of Our Lady of Charity of the Good Shepherd, US Provinces
Congress Too
DC Chapter, National Organization for Women
Edwards, Davis Stover & Associates
Equal Rights Advocates
Family Equality Council
Feminist Majority
Futures Without Violence
Government Information Watch
Hispanic Federation
Human Rights Campaign
Indivisible
Jewish Women International
MS Black Women's Roundtable/ MS Low Income Child Care Initiative
NAACP
National Advocacy Center of the Sisters of the Good Shepherd
National Asian Pacific American Women's Forum (NAPAWF)
National Black Justice Coalition
National Council for Occupational Safety and Health
National Council of Jewish Women
National Employment Law Project
National Employment Lawyers Association
National Equality Action Team (NEAT)
National Network to End Domestic Violence
National Organization for Women
National Partnership for Women & Families
National Whistleblower Center
Planned Parenthood Federation of America
Sargent Shriver National Center on Poverty Law
Senior Executives Association
Southwest Women's Law Center
The Multiracial Activist
UltraViolet
Union for Reform Judaism
URGE: Unite for Reproductive & Gender Equity
Voices for Progress
WisCOSH, Inc.
Women Employed