



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: Concerns Regarding Congressional Accountability Act of 1995 Reform Act (S. ____)

Dear Majority Leader McConnell and Leader Schumer:

As organizations committed to advancing and protecting civil and human rights, workplace equality, access to justice, and transparency, we write to express grave concerns with the Congressional Accountability Act of 1995 Reform Act (S. ____) introduced today.

While we appreciate that Senators, on both sides of the aisle, recognize the critical necessity of reforming the process by which workplace discrimination, including sexual harassment, is addressed in the legislative workforce, this bill contains numerous provisions that are contrary to key principles we've previously articulated, falls short of an acceptable compromise, and may have unintended negative consequences. Additionally, given the scope and breadth of the bill and significant differences between this and the House-passed bill, we are deeply concerned that neither senators nor key stakeholders have been given adequate time to fully vet the bill.

Based on the information we have, our primary concerns include the following:

Limiting Role of the “Confidential Advisor”

The House-passed CAA reform bill recognized the unequal power dynamic between employing offices (i.e., members of Congress) that receive advice and counsel from the taxpayer funded Office of Employment Counsel and Hill staffers (i.e., victims of harassment and discrimination) who are left to fend on their own. The House bill addressed this hurdle and imbalance of power by providing legal counsel to the House workforce. The Senate bill undermines that critical reform. Pursuant to the bill, any licensed attorney may be designated a confidential advisor, but the bill expressly prohibits the advisor from providing legal advice once an individual has filed a claim.

Authorizing the Ethics Committees to Undermine the Reimbursement Obligation

The bill would require the House and Senate ethics committees to review settlements when a Member is the perpetrator, and determine whether reimbursement of the funds paid by the



Treasury is appropriate. The bill gives Members of the ethics committees discretion to decide whether to investigate the claim against the Member, and to determine whether the Member engaged in harassment. Only upon such a determination can a Member be required to reimburse the Treasury. This provision appears to provide an opportunity for a Member who has settled a claim to avoid personal accountability and to be absolved from reimbursing the taxpayers.

Additionally, the ethics committees would have access to settlement documents and any hearing record as part of the review process – without redaction of the claimant’s name and identifying information. Despite everyone’s best efforts, a second review and investigation increases the likelihood of inadvertent disclosures of personal information, re-victimization, and retaliation. Moreover, there may be a chilling effect on staff if they know their names and personally identifying information may be shared with committee Members with whom they may interact throughout their career.

Limiting Members’ Reimbursement Obligation

The Senate bill would require members of Congress to reimburse the Treasury only for compensatory damages. Harassment often results in significant harm in the short and long term. A Member who has committed wrongdoing should be liable for *all* damages negotiated in a settlement or awarded by a court; they should not be shielded from the consequences of their actions. Moreover, this provision would allow Members to game the system by allocating damages so as to minimize the amount that a Member would be required to pay. Taxpayers should not have to subsidize any monies paid by a Member for settlements or awards of claims against them.

Finally, pursuant to the bill, a court or hearing officer would make a determination not only about the underlying claim, but an additional determination that a Member committed a violation that requires them to reimburse the Treasury. This language is unclear and the added requirement is unnecessary, especially where a court has already made a determination and award against the Member.

Codifying the “Severe or Pervasive” Standard and including “Unwelcome Harassment”

In *Meritor Savings Bank v Vinson*, 477 U.S. 57 (1986), the Supreme Court defined actionable sexual harassment as harassment that “must be sufficiently severe or pervasive to alter the conditions of [the victim’s] employment and create an abusive working environment.” Unfortunately, courts’ narrow interpretations of that legal standard have transformed it into a significant barrier for survivors of workplace sexual harassment and a “get out of jail free” pass for perpetrators. This bill unnecessarily codifies that standard and uses it to limit the scope of the reimbursement obligation. That language should be removed.

Moreover, the phrase “unwelcome harassment” should be removed; harassment is never welcome.



Requiring Claimants to Opt out of Mediation

The Senate bill keeps mediation as the status quo for resolving disputes, and requires a claimant to “opt out” of mediation within ten business days of filing a claim. The House bill rightly ended the practice of mandatory mediation because it is unfriendly to claimants and perpetuates a practice that is primarily protective of the institution rather than the claimant. This bill would undo that important reform.

Hiding Past Offenses from Public View

The Senate bill provides that after the bill becomes law, the Office of Congressional Workplace Rights must draft a report that identifies all of the payments made with public funds for awards or settlements in connection with discrimination claims that occurred prior to passage of the bill. However, it appears that no office (or perpetrating Member) will be identified. This lack of transparency is deeply troubling and should be changed.

We very much hope that the Senate and House of Representatives will work together to eliminate or clarify these troubling provisions, and pass a bill that better serves the interest of justice and the legislative workforce. For more information, 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,

American Civil Liberties Union
Equal Pay Today
The Leadership Conference on Civil and Human Rights
National Women’s Law Center
Public Citizen

cc: Members of the United States Senate