

**Testimony of Elise J. Bean  
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**Before**

**Committee on House Administration  
Subcommittee on Modernization**

**On**

**Legislative Proposals to Support Modernizing the  
Congressional Research Service and the Use of Federal Data**

March 20, 2024

Subcommittee Chair Stephanie Bice, Ranking Member Derek Kilmer, and Subcommittee Members, thank you for this opportunity to support the Subcommittee’s efforts to modernize and strengthen the Congressional Research Service, especially when CRS acts to support congressional oversight efforts.

I represent the Carl Levin Center for Oversight and Democracy which is part of Wayne State University Law School in Detroit, Michigan.<sup>1</sup> I am director of the Center’s Washington office. Before that, I spent nearly 30 years working for Senator Levin on oversight inquiries, including the last 15 on the Senate Permanent Subcommittee on Investigations. The Center was established to honor the legacy of Senator Levin who, during his long career representing Michigan, championed fact-based, bipartisan oversight and civil discourse.

Senator Levin used to say, “Good government requires good oversight.” He also appreciated the fact that the Supreme Court has long recognized Congress’ need for information to carry out its constitutional responsibilities. Nearly 100 years ago, in an 8-0 opinion upholding a congressional subpoena seeking information related to the Attorney General, the Supreme Court wrote: “[T]he power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function. . . . A legislative body cannot legislate wisely or effectively in the absence of information.”<sup>2</sup> The Supreme Court explicitly reaffirmed those principles in the 2020 *Mazars* case.<sup>3</sup>

Investigating facts – what happened and why – and analyzing complex problems are at the heart of congressional oversight. They are critical to Congress’ work to enact effective legislation, allocate federal funds, review nominations, evaluate military actions, and inform the

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<sup>1</sup> The Levin Center is affiliated with Wayne State University Law School, but our views do not necessarily present the views of either the University or the Law School.

<sup>2</sup> *McGrain v. Daugherty*, 273 U.S. 135,174-175 (1927).

<sup>3</sup> *Trump v. Mazars USA, LLP*, 591 U.S. \_\_\_, 140 S. Ct. 2019 (2020).

public about what its government is doing. The Supreme Court has long held that “[i]t is unquestionably the duty of all citizens to cooperate with the Congress in its efforts to obtain the facts needed for intelligent legislative action.”<sup>4</sup> The duty to cooperate with congressional information requests, including when made through CRS, applies to federal agencies no less than others and is fundamental to the checks and balances envisioned by the Constitution.

When done well, congressional oversight can save taxpayer dollars, ease problems affecting communities, strengthen federal programs, and carry out Congress’ constitutional obligation to provide a check on executive or judicial branch abuses. Oversight can also help bridge political divides by providing legislators with an opportunity to develop a mutual understanding of a problem and reach consensus on the facts. Consensus on the facts can then provide the foundation needed to develop bipartisan reforms.

CRS has long played a key role in helping Congress gather facts, analyze problems, and conduct effective oversight. CRS employs hundreds of experts whose sole responsibility is to answer questions and provide research requested by Congress. CRS’ expertise and resources are vital to congressional offices pressed to handle countless tasks. CRS has also built a reputation as a source of nonpartisan, reliable information that can be trusted by both sides of the aisle. And it produces a wealth of data in service to Congress. CRS’ latest annual report states that, in fiscal 2022, CRS responded to over 73,000 congressional requests, published nearly 1,100 new written products, and performed over 1,900 updates to existing products.

Senator Levin and his staff made frequent use of CRS. To offer one example, some years ago Senator Levin directed his subcommittee staff to investigate gasoline prices. At the time, the staff knew very little about either gasoline markets or pricing. So they called on CRS experts who provided multiple oral briefings and written materials to educate both sides of the aisle on key facts – how the gasoline market worked, what factors affected price, where to get data on gasoline prices over time, which federal agencies were involved and why, and the names of respected experts who could provide more information. It was invaluable assistance, given our limited staff, limited resources, and limited time. CRS was a force multiplier.

That’s one example. The CRS annual report presents a list 65 pages long of reports and other written products issued during a single year on a vast array of topics, many of which support congressional oversight. They include background primers on complex issues, overviews of agency operations, legal analyses, and factfinding updates. Consider just a few examples:

- U.S. Immigration Courts and the Pending Cases Backlog
- The Dark Web: An Overview
- Russia’s Invasion of Ukraine: Implications for Global Food Prices and Food Security
- Undersea Telecommunication Cables: Technology Overview and Issues for Congress
- Hurricane Outlook and Review of 2020 Hurricane Season
- China Primer: Hong Kong
- Strategic Petroleum Reserve Oil Releases: October 2021 Through October 2022
- Cost-Benefit Analysis in Federal Agency Rulemaking

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<sup>4</sup> *Watkins v. United States*, 354 U.S. 178, 187–88 (1957).

To produce the reports needed by Congress, CRS often needs timely access to data held by federal agencies. For over 50 years, to obtain that agency information, CRS has relied on a federal statute, 2 U.S.C. § 166, which requires federal agencies to comply with CRS information requests when those requests are authorized by a committee. The statute states explicitly that CRS can ask federal agencies for books, records, correspondence, memoranda, papers, and other documents that CRS deems necessary to perform its work.

For the most part, the law has worked well. But in recent years, a few agencies have made it difficult for CRS to secure the information Congress needs. For example, a few agencies have refused to provide information to CRS unless CRS discloses the congressional office behind the request, even though Congress expects CRS to keep that confidential. Some agencies have asked CRS to promise not to share any agency information with a third party, even though the whole point of CRS is to share information with Congress. A few agencies have told CRS that it can obtain information only by making a Freedom of Information Act request even though FOIA doesn't apply to Congress. One agency has insisted that CRS enter into an agency Memorandum of Understanding before it will produce any information but has since refused for over five years to finalize that memorandum.

The bottom line is that Congress needs to reinvigorate the law undergirding CRS' authority to obtain agency information. One of the bills under consideration today would do just that by clarifying, strengthening, and modernizing Section 166. For example, the bill would extend CRS' authority to obtain agency information not only when CRS is authorized by a committee to make a request, but also when authorized by an individual Member of Congress or when CRS itself anticipates Congress will need the information. The bill also makes clear that CRS may request agency data in any form and states explicitly that agencies must produce requested information "in a timely manner." Those provisions would give CRS the same authority to access agency information that the Congressional Budget Office already exercises under 2 U.S.C. § 601. It would provide the two congressional support agencies with equivalent legal status to obtain the information needed by Congress.

The improved statutory language would not, however, cure all of the agency intransigence confronting CRS. This Subcommittee and other House and Senate committees will still need to lend CRS a helping hand by overseeing agency compliance with the law. At the same time, enactment of new and improved statutory language would send a clear message to federal agencies that they are expected to comply with CRS information requests.

CRS is one of the few institutions dedicated to supporting the work of Congress, including congressional inquiries and investigations. It is also one of the few institutions trusted by both sides of the aisle to produce information that is both reliable and nonpartisan. In return, Congress should support CRS by enacting modernizing legislation that will clarify and strengthen CRS' ability to obtain information from federal agencies. Effective congressional oversight is virtually impossible without timely and useful information from the executive branch, so equipping CRS with better legal authority to obtain the information to which Congress is entitled under the Constitution will benefit every Member of the House and Senate.

Thank you again for this opportunity. I am ready to answer any questions.