

Hon. Mitch McConnell
Senate Majority Leader
317 Russell Senate Office Building
Washington, DC 20510

Hon. Paul Ryan
Speaker of the House
1233 Longworth House Office Building
Washington, DC 20515

Hon. Charles Schumer
Senate Minority Leader
322 Hart Senate Office Building
Washington, DC 20510

Hon. Nancy Pelosi
House Minority Leader
233 Cannon House Office Building
Washington, DC 20515

(Additional addressees below)

Re: Enhancing Congressional Capacity on Technology Policy

Dear legislators:

On behalf of the undersigned organizations, we write to express our deep concerns about Congress' lack of capacity to meet the complex and pressing array of technology policy challenges facing our nation. You do not have to look further than the recent hearings with Facebook CEO Mark Zuckerberg to see that lawmakers are not getting the expert advice they need. However, rather than modernizing to adapt to our changing times, Congress' internal capacity has only declined in recent decades.¹ To address this gap, we urge you to take steps to bring Congress into the twenty-first century and enhance its institutional capacity for deep technical expertise and analysis.

Science and technology expertise is not just a nice thing to have; it is essential for our national security. As you may know, America now faces a range of sophisticated cyber threats. This includes botnets of hacked Internet of Things devices, ransomware that can hold entire cities hostage, and attacks on our electoral infrastructure that could disrupt future elections and undermine trust in our democracy. To mitigate these highly complex challenges, lawmakers need access to expert analysis to help evaluate tradeoffs – such as between global competitiveness, civil liberties and security – as well as the viability of different technical solutions.

Technological expertise in Congress is also crucial for America's continued global leadership and economic prosperity.² Emerging technologies such as artificial intelligence, driverless cars and additive manufacturing each offer transformative social and economic potential. However, enacting misguided laws and regulations now, or failing to deftly update current legal

¹ See, e.g., Curtlyn Kramer, "Vital Stats: Congress has a staffing problem, too," Brookings Institution, May 24, 2017. <https://www.brookings.edu/blog/fixgov/2017/05/24/vital-stats-congress-has-a-staffing-problem-too/>.

² Thanks to a friendly regulatory climate, American technology companies dominate the list of most valuable firms in the world and are able to employ millions of U.S. workers. Apple, for instance, is responsible for creating 2,000,000 U.S. jobs. See, e.g., "Two Million U.S. Jobs and Counting," Apple, 2018. <https://www.apple.com/job-creation>.

frameworks, could strangle these innovations while sending entrepreneurs and investors overseas.

Good policymaking is built on a foundation of access to factual information and objective analysis. This limits the likelihood of reactive policymaking motivated by “techno-panics,” and promotes forward-looking legal frameworks such as those that allowed the early Internet to flourish.³

As you know, given limited resources and a fast-paced legislative calendar, members of Congress and their staff cannot be expected to tackle these challenges alone. When they need help, they often turn to legislative branch support agencies like the Congressional Research Service (CRS). While CRS has many virtues, its orientation to the production of responsive summaries of existing research is not enough. Neither are the Government Accountability Office or the Congressional Budget Office, for all their expertise, currently situated to advise Congress on these kinds of technical matters.

Congress *used* to have an agency that specialized in helping to address complex technical challenges. Established in 1972 and shuttered in 1995, the Office of Technology Assessment (OTA) provided Congress with unbiased, rigorous technical analysis. During its existence as an independent legislative branch support agency, the OTA produced robust original research reports and other materials authored by teams of highly-credentialed scientists and engineers in consultation with outside stakeholders in industry and academia. Its studies also helped lead to cost-savings⁴ in government technology programs well in excess of its own \$22 million budget.⁵ While OTA was defunded in 1995, its authorizing statute still remains in effect.⁶ Of course, the revival of OTA’s function does not necessarily mean doing things the same way or having the same priorities. A modern OTA could streamline its focus, take advantage of new technologies for analysis, and find ways to be more responsive to the needs of rank and file members.

An alternative to OTA also exists in a small, experimental technology assessment program at the GAO. This program was set up in 2002, and currently produces a few reports each year. While it lacks resources and in-house experts, it could be another vehicle capable of filling this gap.⁷

³ For more discussion of techno-panics and innovation see: Adam Thierer, *Permissionless Innovation*, (Mercatus Center, 2017), pp. 69-71.

⁴ For example, analysis by the OTA helped modernize the Social Security Administration’s IT systems, saving taxpayers \$368 million. Additionally, its criticism of the Synthetic Fuels Corporation contributed to billions in taxpayer savings. See, e.g., M. Granger Morgan and Jon M. Peha, *Science and Technology Advice for Congress*, (Routledge, 2003), p. 69.

⁵ About \$35 million in 2017 dollars.

⁶ 2 U.S.C. §§ 471-481

⁷ Zach Graves, “Technology assessment: Can the GAO fulfill the OTA’s mission?,” LegBranch.com, April 20, 2018. <http://www.legbranch.com/theblog/2018/4/20/technology-assessment-can-the-gao-fulfill-the-otas-mission>.

The House Committee on Appropriations already has included language in its FY2019 report that directs CRS to work with an outside entity such as the National Academy of Public Administration to conduct a study that would:⁸

[Detail] the current resources available to Members of Congress within the Legislative Branch regarding science and technology policy. This study should also assess the potential need within the Legislative Branch to create a separate entity charged with the mission of providing nonpartisan advice on issues of science and technology.

The dearth of technological expertise in the legislative branch makes it difficult for Congress to properly evaluate the divergent claims of executive agencies, academic centers, interest groups and lobbyists. This circumstance is unfavorable to the health of our democracy, as the people's representatives ought to have the resources to make independent determinations about the facts. Indeed, the Constitution's separation of powers assumes that Congress should have analytical capabilities that are independent from the other branches of government.

A twenty-first century Congress needs to be able to understand the policy challenges of a twenty-first century world. In order to bring about a safe and prosperous future, we urge you to act now to strengthen the First Branch's expertise and analytical capacity on science and technology issues.

Sincerely,

R Street Institute

TechFreedom

Lincoln Network

OpenGov Foundation

⁸ See H.R. Rep. No.115-XXX, at 18 (2018), <https://docs.house.gov/meetings/AP/AP00/20180508/108282/HRPT-115-HR-FY2019-LegBranch.PDF>.

Additional addressees:

Hon. Kevin McCarthy
2421 Rayburn House Office Building
Washington, DC 20515

Hon. John Cornyn
Senate Majority Whip
517 Hart Senate Office Building
Washington, DC 20510

Hon. Steve Scalise
House Majority Whip
2338 Rayburn House Office Building
Washington, DC 20515

Hon. Dick Durbin
Senate Minority Whip
7311 Hart Senate Office Building
Washington, DC 20510

Hon. Steny Hoyer
House Minority Whip
1705 Longworth House Office Building
Washington, DC 20515

Hon. John Thune
Chairman
Senate Committee on Commerce,
Science & Transportation
511 Dirksen Senate Office Building
Washington, DC 20510

Hon. Bill Nelson
Ranking Member
Senate Committee on Commerce,
Science & Transportation
716 Hart Senate Office Building
Washington, DC 20510

House Majority Leader
Hon. Greg Walden
Chairman
House Energy & Commerce Committee
2185 Rayburn House Office Building
Washington, DC 20515

Hon. Frank Pallone
Ranking Member
House Energy & Commerce Committee
237 Cannon House Office Building
Washington, DC 20515

Hon. Michael McCaul
Chairman
House Committee on Homeland Security
2466 Rayburn House Office Building
Washington, DC 20515

Hon. Bennie Thompson
Ranking Member
House Committee on Homeland Security
131 Cannon House Office Building
Washington, DC 20515

Hon. Lamar Smith
Chairman
House Committee on Science, Space &
Technology
2409 Rayburn House Office Building
Washington, DC 20515

Hon. Eddie Bernice Johnson
Ranking Member
House Committee on Science, Space &
Technology
2468 Rayburn House Office Building
Washington, DC 20515

Hon. Rodney Frelinghuysen
Chairman
House Committee on Appropriations
2306 Rayburn House Office Building
Washington, DC 20515

Hon. Nita Lowey
Ranking Member
House Committee on Appropriations
2365 Rayburn House Office Building
Washington, DC 20515Hon.

Richard Shelby
Chairman
Senate Committee on Appropriations
304 Russell Senate Office Building
Washington, DC 20510

Hon. Patrick Leahy
Ranking Member
Senate Committee on Appropriations
437 Russell Senate Office Building
Washington, DC 20510

Hon. Steve Daines
Chairman
Legislative Branch Subcommittee, Senate
Committee on Appropriations
320 Hart Senate Office Building
Washington, DC 20510

Hon. Chris Murphy
Ranking Member
Legislative Branch Subcommittee, Senate
Committee on Appropriations
136 Hart Senate Office Building
Washington, DC 20510

Hon. Kevin Yoder
Chairman
Legislative Branch Subcommittee, House
Committee on Appropriations
2433 Rayburn House Office Building
Washington, DC 20515

Hon. Tim Ryan
Ranking Member
Legislative Branch Subcommittee, House
Committee on Appropriations
1126 Longworth House Office Building
Washington, DC 20515