

Testimony

of Daniel Schuman

Policy Counsel of the Sunlight Foundation
Director of the Advisory Committee on Transparency

before the Committee on Appropriations
Subcommittee on Legislative Branch
United States House of Representatives

on Appropriations for Fiscal Year 2012
Regarding transparency and funding for the
Congressional Research Service and bulk
access to THOMAS legislative information

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Chairman Crenshaw, Ranking Member Honda, and members of the Committee, thank you for allowing me to appear before you today.

My name is Daniel Schuman, and I am the Policy Counsel for the Sunlight Foundation, a non-partisan non-profit dedicated to using the power of the Internet to increase government openness and transparency. I am here today to speak with you about empowering the Congressional Research Service to better serve Congress and the American people by eliminating the red tape that constrains public access to its work, and encouraging this committee to follow-up on its languishing inquiry regarding public access to the raw legislative information that powers THOMAS.

Permit Public Access to General Distribution CRS Products

American taxpayers spend around \$100 million a year to fund CRS and its nearly 700-strong staff. As an administrative unit of the Library of Congress, CRS has historically furthered the Library's public mission¹ by, among other things, composing legislative summaries that are published on THOMAS; updating the legal treatise "Constitution of the United States, Analysis and Interpretation;"² exchanging ideas with scholars and other interested parties;³ and writing reports that are made publicly available with some frequency.⁴

¹ "To support Congress in fulfilling its constitutional duties and to further the progress of knowledge and creativity for the benefit of the American people," *Strategic Plan: Fiscal Years 2011-2016*, Library of Congress, available at <http://l.usa.gov/IVyWm6>.

² Public availability of the *Constitution Annotated* is required by statute, and in November 2010 the Joint Committee on Printing directed the Library and GPO to improve its accessibility online. <http://bit.ly/mLhFcY>. Nearly six months later, there is no publicly visible progress.

³ For much of CRS's history, staff "[a]ttendance at professional association conferences was encouraged and financially supported while, concomitantly, it was clear that CRS general distribution products, such as CRS reports, could be made available to interested parties, domestic or foreign, without limitations." *Across the Hill: The congressional research service and providing research for congress—A retrospective on origins*. Harold Relyea, *Government Information Quarterly*, Vol. 24, 414-422 (2010).

⁴ Many CRS reports are drafted with the knowledge that congressional offices will distribute them to the general public. From 1980 to 1990, CRS published a journal open to public subscription that contained its analysis of important issues before Congress. "Published ten times a year and available to the public by subscription (freely distributed to congressional committees), the *Review* offered original analytical articles, summaries highlighting CRS research products, and other kinds of assistance to the congressional community." *Across the Hill* at 421. It was not until 2007 that CRS began requiring staff to seek "prior approval ... at the division or office level before products are distributed to members of the public." That rule is subject to many exceptions. *Distribution of CRS Products to Non-Congressional*,

CRS products often can be found online. Several private companies sell CRS Reports, for example.⁵ Government⁶ and non-profit websites⁷ also collect the reports and make them available as a public service. Unfortunately, there is no comprehensive source, and updated versions of the reports are frequently unavailable.⁸ The legal treatise *Constitution Annotated*, another CRS product, has been published online for a decade through a collaborative GPO/CRS effort, but in an inadequate fashion such that the content is difficult to use and always significantly out-of-date.⁹

CRS products help frame public debate on important issues. In the last two years alone, major newspapers cited CRS reports 779 times, including 70 mentions in the *Washington Post* and 65 mentions in the *New York Times*.¹⁰ Federal courts also have made use of CRS analyses. In the last decade, courts have cited CRS Reports 130 times. From 1973-2010, the U.S. Supreme Court cited CRS Reports 34 times, and circuit courts cited CRS 112 times.¹¹ Similarly, the *Constitution Annotated* is a sufficiently important public resource that Cornell, Justia, and others have undertaken great effort to republish it online in an integrated and useful format.¹²

internal CRS memo (March 20, 2007), available at <http://bit.ly/mqOz9U>. CRS worked with the House of Representatives in allowing Member websites to dynamically display CRS Reports. *Legislation of Interest to CRS: Public Access to CRS Reports*, internal CRS memo (December 2003), available at <http://bit.ly/iTBdPd>. CRS reports it has developed a similar capability in the Senate. *Annual Report for Fiscal Year 2008* at p. 36, Congressional Research Service, available at <http://bit.ly/iIZxvL>.

⁵ Companies selling reports include Penny Hill Press (\$29.95 per report without a subscription), Lexis Nexis Congressional, BNA, CQ/Roll Call, and Westlaw.

⁶ Government entities publishing CRS reports online include the Department of State, the U.S. Department of Justice, the United States Air Force Academy, the US Embassy in Italy. See <http://bit.ly/kATkZo>.

⁷ Non profit organizations publishing CRS reports online include Open CRS, the National Library for the Environment, the National Agricultural Law Center, the Federation of American Scientists, the Thurgood Marshall Law Library, the University of North Texas, the First Amendment Center. See <http://bit.ly/iNSTuQ>.

⁸ It is unfortunate that the public must rely on outdated reports to gain an understanding of Congress's work, especially when more accurate reports are available.

⁹ A coalition of organizations have requested better public access to the *Constitution Annotated*, including that it be published online as it is updated and with metadata intact. See *20+ Orgs Ask for Better Access to the Constitution Annotated*, Daniel Schuman (September 17, 2010), available at <http://bit.ly/mrv12n>. In November 2010 the Joint Committee on Printing directed CRS and GPO to provide “enhanced access,” which satisfied part of coalition's request, but after the elapse of six months no online edition has emerged despite the committee's instruction. See *JCP directs enhanced access to 3 of 'our nation's vital legislative and legal documents'*, Daniel Schuman (February 14, 2011), available at <http://bit.ly/mLhFcY>. Cornell University's Legal Information Institute has published a prototype of the *Constitution Annotated* online, but is limited by the poor quality and format of the data available from CRS. See <http://bit.ly/muSvbb>.

¹⁰ Based on a March 2010 search of the Nexis database using the keywords “‘congressional research service' w/2 report” and limited to “major newspapers.”

¹¹ See *Federal Judicial Citation of CRS Reports 19730-2010*, available at <http://bit.ly/iyH4Jh>.

¹² A print edition is available for purchase from GPO for \$226, but it is expensive and cumbersome. In addition to buying the decade-old document, to maximize its usefulness, a user must also buy a

Since 1952, annual legislative branch appropriations language has restricted the Library of Congress's ability to pay for publication costs. With minor variations since 1954, annual appropriations bills have required:

That no part of such amount [used to carry out the provisions of section 203 of the Legislative Reorganization Act of 1946] may be used to pay any salary or expense in connection with any publication, or preparation of material therefor (except the Digest of Public General Bills), to be issued by the Library of Congress unless such publication has obtained prior approval of either the Committee on House Administration of the House of Representatives or the Committee on Rules and Administration of the Senate.¹³

Note that the limitation is drafted to apply to the Library of Congress; CRS was not created until 1970, 18 years after the restriction was first instated, and its predecessor organization, the Legislative Reference Service, played a much more limited role.¹⁴

It's likely that this 59-year-old restriction was intended as a cost-savings measure, leftover from a bygone era of expensive layout and printing costs.¹⁵ Times have changed, and these limitations are a counterproductive anachronism in the Internet age. A coalition of 38 organizations recently wrote to you to urge an end to the restriction.¹⁶

biennially updated "pocket part" (for \$21) and collate the two documents together.

¹³ See, e.g., *Congressional Operations Appropriations Act, 1998*, 105 P.L. 55, available at <http://1.usa.gov/j2Bdqe>. Unlike later legislation, neither the the *Legislative Branch Appropriation Act of 1952* (82 P.L. 168) nor the *Legislative Branch Appropriation Act of 1953* (82 P.L. 471) included a grant of authority to the Committee on House Administration or the Senate Committee on Rules and Administration to waive this restriction. The *General Appropriations Appropriation Act of 1951* did not impose a publication restriction. (81 P.L. 759)

¹⁴ Even with its limited role, LRS staff studies and compilations of data have been described as "often recei[ving] wide circulation outside as well as inside Congress." *Across the Hill* at 418.

¹⁵ The report accompanying the Legislative Branch Appropriations Act of 1952 supports this view. See <http://bit.ly/mDMiUp>. Congressional committees had been drawing upon Library funds to publish their reports, a practice that was stopped after the insertion of this language. Based on records from the Committee on Appropriations hearings on H.R. 5805 in 1954, Congress debated removing the publication restriction two years after it was enacted, but instead decided to grant an exemption to publications that received prior approval from the Committee on House Administration or the Senate Committee on Rules and Administration. It did so as a way to "permit the policy committees to retain strict control over the scope of such a publications program." A concern expressed by Senator Mundt was regarding the possibility that congress may go into the mail-order business. "I can see how that kind of analysis would be in great demand by newspapers and women's clubs, and so forth, and unless put on some compensatory basis would run to quite an expenditure." See <http://bit.ly/mxjIGf>.

¹⁶ The letter is available at <http://scr.bi/ilZiyn>. Signatories include the American Association of Law Libraries, the American Association of University Professors, the American Library Association, the American Society of News Editors, the Association of Research Libraries, the Bill of Rights Defense Committee, the Center for Fiscal Accountability, the Center for Investigative Journalism – Puerto Rico, the Center for Media and Democracy, the Center for Responsive Politics, Citizens for Responsibility and Ethics in Washington – CREW, Colgate University Libraries, Defending Dissent Foundation, the Electronic Frontier Foundation, Essential Information, the Federation of American Scientists, Free Government Information, the Government Accountability Project – GAP, Investigate Reporters and

Modern CRS products, including CRS Reports, are created in digital form and published on the congressional intranet.¹⁷ Were these products released to the public, it would likely be through electronic means that would impose minimal additional expense. More than ten thousand CRS Reports have already been published online by commercial vendors and public interest groups.¹⁸ Ironically, CRS may be incurring costs in its attempts to prevent reports from being publicly disseminated, especially considering that those efforts are only sporadically effective, constitute a diversion from the agency's core purposes, and are contrary to the Library's mission.

Decisions regarding public access to CRS work products specifically, and library publications generally, ultimately reside with the individual Members of Congress, the coordinating efforts of the Joint Committee on Libraries, and each House.¹⁹ For the last 15 years, CRS's embrace of an overbroad interpretation of the appropriations limitation has stifled its ability to innovate, meet the needs of its clients, and fulfill its public responsibilities. It needs a clear signal from Congress to modernize, and Congress should eliminate CRS's excuse for failing to do so.

When congressional staff google for CRS reports, review Cornell's *Constitution Annotated* website to learn about a Supreme Court decision, search YouTube for a CRS briefing on changes in Federal Law, or attempt to send a constituent a link to a CRS report, they find themselves frustrated or misled. It is wishful thinking to believe that congressional staff will seek out CRS products only in the way that CRS desires. CRS has behaved as if it is statutorily prohibited from lifting a finger to meet its clients

Editors, iSolon.org, the Liberty Coalition, the National Coalition for History, National Security Counselors, the Northern California Association of Law Libraries, OMB Watch, OpenTheGovernment.org, Point of Order, the Progressive Librarians Guild, the Project on Government Oversight – POGO, Public Citizen, Reporters Committee for Freedom of the Press, the Society of Professional Journalists, the Special Libraries Association, the Sunlight Foundation, the Union of Concerned Scientists, the Washington Coalition for Open Government, Western Carolina University Libraries, and WildEarth Guardians.

¹⁷ This has been true for quite a while. CRS's 2004 Annual Report touts the CRS Website as “the primary delivery mechanism for CRS analysis and expertise; over 85 percent of the distribution of CRS products was through the Web.” At that time print products, such as the “info packs,” were made redundant. <http://bit.ly/lDTTOd> CRS launched a redesigned website in 2009. According to CRS' 2009 *Annual Report*, “CRS is committed to delivering to Congress a high-quality, online experience that reinforces the CRS mission of contributing to and supporting an informed national legislature.” <http://bit.ly/jFTzsz>

¹⁸ It is conceivable that CRS could make its products available in bulk to others who publish the reports online, entailing virtually no costs to the agency whatsoever. Other inexpensive methods are easily identifiable.

¹⁹ Many efforts have been undertaken by members of the House and Senate to make CRS Reports publicly available, for example. The following is a list of legislation that has been introduced to that effect. 111th Congress: HR 4983, HR 3763, S Res 118; 110th Congress: HR 2545, S Res. 401; 108th Congress: HR 3630, S Res 54; 107th Congress: S Res. 21; 106th Congress: HR 4582, HR 654, S 393; 105th Congress: HR 3131, S 1578. Members of Congress have also written numerous letters and published many reports on individual and committee websites. Similar letters have been sent over the years. See, for example, *Placing Congressional Research Service Reports and Products on the Internet*, Constitutional Accountability Project (1997), available at <http://bit.ly/j2KySZ>.

halfway.²⁰

Let me be clear: no one has requested that all CRS reports be made publicly available. One-on-one communications between CRS and individual Members of Congress or their staff are and ought to be confidential. However, such confidentiality is inappropriate when applied to other CRS products, including reports for general distribution, legislative summaries, the legal treatise *Constitution Annotated*. As former counsel to the House of Representatives Stan Brand wrote in 1998, legal and constitutional concerns often raised by CRS with respect to making CRS Reports available on the Internet “are either overstated, or the extent they are not, provide no basis for arguing that protection of CRS works would be weakened by [legislation to put CRS reports online].”²¹

Speaker Boehner and Majority Leader Cantor recently wrote to the Clerk of the House to encourage the development of a new electronic data standard to make legislative information more open and Congress more accountable to the American people.²² That same requirement of openness and accountability should apply to CRS – an arm of the legislative branch – except in the instances where confidentiality of support to Members of Congress is appropriate, such as in limited-distribution memoranda and personal consultations. We ask that the Committee bring CRS into the 21st century by granting it the flexibility to release its products online without excuse or fear of violating an antiquated publication restriction.

Public Access to THOMAS Information

There is little need for me to remind this committee of the importance of public access to legislative information. The Pew Research Center’s 2010 *Government Online* report found that one in five adults who use the Internet had downloaded or read legislation during the past year.²³ THOMAS, the online portal through which this information flows, has provided an invaluable window into the workings of Congress. Unfortunately, the American people are thirsty for information, but can only access this information one drop at a time.

In 2009, this committee adopted a forward-thinking approach that would have required an examination of granting the American people access the entirety of the legislative archives at once – via a method known as “bulk” access – in its explanatory statement accompanying the Omnibus Appropriations Act of 2009.²⁴ It said:

²⁰ The original authors of the prohibition against library publication never could have imagined the ease of online distribution. There are serious concerns as to whether “publication” applies to online publication, or in this particular context.

²¹ Letter to Senator John McCain from Stan Brand, of Brand, Lowell & Ryan, delivered on January 27, 1998, available at <http://bit.ly/m8tVSE>.

²² Letter to the Honorable Karen Haas from Speaker John A. Boehner and Majority Leader Eric Cantor (April 29, 2011), available at <http://scr.bi/inig4d>.

²³ View the report here: <http://bit.ly/iKWY6Q>.

²⁴ Available at <http://bit.ly/kEiQeN>.

Public Access to Legislative Data.--**There is support for enhancing public access to legislative documents, bill status, summary information, and other legislative data through more direct methods such as bulk data downloads and other means of no-charge digital access to legislative databases.** The Library of Congress, Congressional Research Service, and Government Printing Office and the appropriate entities of the House of Representatives are directed to prepare a report on the feasibility of providing advanced search capabilities. This report is to be provided to the Committees on Appropriations of the House and Senate within 120 days of the release of Legislative Information System 2.0.

Nearly three years later, no such report has been issued (as far as we know). There is no reason to believe that Legislative Information System 2.0 as originally identified will be “released” any time soon, if at all, or in a fashion that would trigger the release of this report.²⁵

In the meantime, the Government Printing Office, one of the entities responsible for THOMAS, has published five datasets online in bulk, including the Code of Federal Regulations and the Federal Register.²⁶ Already technologists have found ways to reuse this information in new and exciting ways that enhance public access.

Although there are ongoing efforts to obtain the data from THOMAS through other means, these methods are prone to error, onerous, slow, and fragile. We must do better. Providing bulk access to THOMAS data would allow users to download large amounts of information at once, providing technology innovators with the ability to creatively use data to solve new problems and address unmet needs. This could include the ability to see how amendments would change bills in real-time, identify similar legislation introduced over multiple congress, allow users to receive alerts upon movement of noteworthy legislation, and much more.²⁷

Times have changed since the Committee's original unheeded directive, and we request your renewed attention. We urge the committee to direct the Library of Congress, the Government Printing Office, and the Congressional Research Service – or the agencies that now have responsibility for THOMAS – to provide bulk access to legislative documents, bill status, summary information, and other legislative data within 120 days. In addition, we ask for the immediate creation of an advisory committee composed of members of these agencies and members of the public that regularly meets to address the public's need for public access to this information and the means by which it is provided.

²⁵ According to the *Annual Report Fiscal Year 2009* issued by the Congressional Research Service, “the Service and the Library jointly initiated a major, multi-year initiative to develop a strategic direction for the Legislative Information System (LIS),” available at <http://bit.ly/mvsCYh>. “The project consists of four key strategy areas: ... developing and implementing LIS 2.0...”

²⁶ See <http://1.usa.gov/kukxRG>.

²⁷ See *Apps For THOMAS: 3 wishes*, Daniel Schuman (July 29, 2010), available at <http://bit.ly/kiy2hW>.

Speaker Boehner and Majority Leader Cantor recently wrote to the Clerk of the House to encourage better public access to House legislative information. We request that you undertake similar efforts for the entirety of Congress's legislative information.

Conclusion

This committee has the unparalleled opportunity to make government more open and accountable. At a minimum, the committee should make clear that CRS has the ability to grant public access to general distribution CRS products by ending this antiquated and outmoded appropriation restriction. It should also bring THOMAS into the 21st century by requiring bulk access to legislative information and public consultation on its evolution. Both of these measures would bring us toward an open, transparent government and an informed, engaged public.

Thank you for the opportunity to testify today. I look forward to your questions.