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PROJECT ON  
GOVERNMENT OVERSIGHT

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November 13, 2018

## **Strengthening Congressional Committee Rules: Recommendations for Improved Oversight and Transparency**

Dear Member of Congress:

We are writing to urge specific improvements to House and Senate committee rules in order to strengthen Congressional oversight.

The rules of the House and Senate determine important procedures, duties, and authorities of the Congressional committees. These rules range from how committees initiate investigations and conduct hearings to how they determine whether to subpoena government officials. We propose strengthening specific rules to encourage more bipartisan, transparent, and, ultimately, effective oversight.

The Project On Government Oversight (POGO) is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing. We champion reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles. POGO's mission has long included working to strengthen the effectiveness of federal government oversight, and we have written extensively on the importance of effective Congressional investigations.<sup>1</sup>

As you know, at the beginning of each session of Congress the House of Representatives adopts its rules, including those pertaining to committee procedures, authorities, and requirements.<sup>2</sup> Further, each committee is allowed to adopt rules on specific matters, as long as these rules do not contradict the House rules. Likewise, the Senate has its own procedural rules,<sup>3</sup> along with the additional rules of each committee. These are posted on the websites of the House Committee on Rules and the Senate Committee on Rules and Administration. Each committee in the House and Senate is also required to post its individual rules on its website.

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<sup>1</sup> Project On Government Oversight, *Necessary and Proper: Best Practices for Congressional Investigations*, June 7, 2017. <https://www.pogo.org/report/2017/06/necessary-and-proper-best-practices-for-congressional-investigations/>

<sup>2</sup> House Committee on Rules, *Rules of the House of Representatives, One Hundred Fifteenth Congress*, January 5, 2017. <https://rules.house.gov/sites/republicans.rules.house.gov/files/115/PDF/House-Rules-115.pdf> (Downloaded November 8, 2018)

<sup>3</sup> Senate Committee on Rules and Administration, *Standing Rules of the Senate*, January 24, 2013. <https://www.rules.senate.gov/imo/media/doc/CDOC-113sdoc18.pdf> (Downloaded November 8, 2018) (Hereinafter Senate Rules)

Our staff collected and analyzed all of the current House and Senate committee rules. We determined a series of improvements, some of which mirror practices of one or more committees and others of which would be new to Congress.

## **Improvements to Both House and Senate Committee Rules**

**Require Disclosure About Congressional Fellows** – Members of Congress often have fellows on their staff who are paid by corporations, foundations, universities, nonprofits, and other non-governmental entities.<sup>4</sup> The work of Congressional fellows is often indistinguishable from permanent staff, and fellows generally conduct policy research and write legislation. Congressional offices should ensure that fellows have no conflicts of interest and that their placement in the office gives no undue advantage to special interest groups.<sup>5</sup> According to the rules of the Senate, the Congressional office is required to report to the Senate Ethics Committee the source and amount of the fellow’s compensation, and make these reports available to the public.<sup>6</sup> But compliance is poor and POGO has found numerous examples of conflicts of interest within the program.<sup>7</sup> The Senate should require full compliance with this rule, and establish a review process to ensure accurate and complete reporting. The House has no such rule. It should require a rule similar to the Senate’s, and include requirements to ensure full compliance and a review process.

**Require Questions for the Record to Be Made Public in a More Timely Manner** – The House and Senate should, in a more timely manner, make available to the public, and therefore also to all members of Congress, the responses to hearing questions provided by witnesses for the record after the conclusion of the hearing. Currently, there are no rules as to when a committee must make public the responses, and they are often made public months or even more than a year after the hearing date as part of the written hearing report. Committees should post on their websites the questions and responses in a timely manner, no more than 45 days after receiving them.

**Require Hearing Transcripts to Be Made Public in a More Timely Manner** – Currently, committees do not have written rules regarding when they should release hearing transcripts to the public. As with questions for the record, transcripts are released as part of the written hearing reports. However, House and Senate committees should make hearing transcripts available to the public in a timely manner.

**Broaden Witness Disclosure Statements** – The House requires non-governmental hearing witnesses to disclose certain foreign funding.<sup>8</sup> The requirement was adopted after multiple news outlet investigations revealed some think tanks had been receiving millions in funding from foreign

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<sup>4</sup> POGO runs a Congressional fellow program called the Project On Government Oversight Congressional Oversight Fellowship. <https://www.pogo.org/congressional-oversight-fellowships/>

<sup>5</sup> Nicholas Trevino and Lydia Dennett, Project On Government Oversight, “Congress (Still) Fails to Enforce Ethics Rules for Fellows,” November 13, 2018; <https://www.pogo.org/investigation/2018/11/congress-still-fails-to-enforce-ethics-rules-for-fellows/>

<sup>6</sup> Senate Rules, XLI Political Fund Activity; Senate Ethics Manual, p. 125.

<https://www.ethics.senate.gov/downloads/pdffiles/manual.pdf> (Downloaded November 8, 2018)

<sup>7</sup> Project On Government Oversight, “The Insidious (and Totally Legal?) Way That Industry Has Infiltrated Congress,” September 21, 2016. <https://www.pogo.org/investigation/2016/09/insidious-and-totally-legal-way-that-industry-has-infiltrated-congress/>

<sup>8</sup> U.S. House of Representatives, Rules of the House of Representatives, § 798. Open meetings and hearings (5)(B), p. 571. <https://www.gpo.gov/fdsys/pkg/HMAN-115/pdf/HMAN-115.pdf#page=584>

governments with an interest in the hearings, with little or no disclosure when representatives of those think tanks testified before Congress.<sup>9</sup> Non-governmental witnesses are required to file “Truth in Testimony” forms disclosing any U.S. government grants or contracts, and now witnesses must also disclose any payments they or their organization have received in the last two years from a foreign government related to the subject of the hearing. The House Committee on Foreign Affairs also requires that non-governmental witnesses disclose if they are registered representatives of a foreign government or political party under the Foreign Agents Registration Act. All House and Senate committees should require witnesses to disclose funding from all foreign government sources, in addition to U.S. federal government funding. The Senate should adopt and broaden current House rules ensuring their witnesses disclose any potential conflicts of interest with foreign governments. If a witness is a registered foreign agent, he or she should also be required to provide that information to the committee as part of the disclosure process.

**Establish More Bipartisan Deposition Procedures** – Typically, a House and Senate chair may authorize depositions after consulting with the ranking member. However, the Senate Committee on Homeland Security and Governmental Affairs’ rules provide more power to the minority by enabling the Ranking Member to object to depositions initiated by the chair. If the Minority objects, the rules then require a vote by the committee in order for the deposition to proceed. Further, the rules for that committee’s Permanent Subcommittee on Investigations allows, among other things, more flexibility for staff involvement in depositions. Both sets of rules should serve as the basis for other committees’ depositions procedures in both the House and Senate.

**Require Earlier Committee Member Access to Oversight Reports** – House rules state that members of the committee and their staff have access to oversight reports at least twenty-four hours before a hearing. These reports provide important background information and are often central to a hearing. However, not all members and staff are involved in the research and writing of the reports, and they may not have access to the findings and background materials until committee leadership grants that access. Sometimes a committee chair will not grant access to even the ranking member until the required twenty-four hours prior to the hearing. This gives little time for members to understand an oversight report and prepare for the hearing. Committees should grant access to oversight reports at least three days prior to a hearing. This, for example, is the length of time currently required by the House Committee on Oversight and Government Reform.

**Allow Member Designee Access to Classified Information** – Congressional committees play pivotal roles in overseeing our military and national security. Many committee staff have appropriate levels of clearance, allowing them access to classified materials and briefings. However, too few staff in personal offices are allowed to hold top secret/compartmented security clearances. This means that many staffers who work directly for members on committees that oversee the executive branch are blindfolded. The House and Senate typically allow each Member of Congress to designate only two personal office staff to receive a top secret clearance. Instead, at least one of those staffers for members on committees that deal with national security issues should be eligible to receive clearance at a higher level than top secret, called sensitive compartmented information

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<sup>9</sup> Ken Silverstein, “Their men in Washington: Undercover with D.C.’s lobbyists for hire,” *Harper’s Magazine*, July 2007. <https://harpers.org/archive/2007/07/their-men-in-washington/>; Eric Lipton, Brooke Williams, and Nicholas Confessore, “Foreign Powers Buy Influence at Think Tanks,” *The New York Times*, September 6, 2014. <https://www.nytimes.com/2014/09/07/us/politics/foreign-powers-buy-influence-at-think-tanks.html> (All downloaded November 8, 2018)

level. This would significantly strengthen those members' ability to conduct oversight, as it allows staff to press the intelligence agencies to answer the hard questions.

**Clarify Authority to Release Classified Information in the Public Interest** – Committee rules are vague as to who determines when to release classified information that is part of its oversight jurisdiction. Committee rules should specify procedures that allow the chair, ranking member, or two-thirds of the membership of a committee to refer information to the full chamber for release in the public interest. The President could be allowed thirty calendar days (or five calendar days, if there is a pressing need) to explain why any motion to release the information should be withdrawn.

## Improvements to House Rules

**End the Holman Rule** – The House should not reinstitute the Holman Rule, which allows Representatives to cut the pay of an individual federal worker to \$1 annually through a line item in an appropriations bill.<sup>10</sup> The rule can be weaponized because under the rule there is no due process to protect federal employees or entire offices from undue punishment or retaliation when their work draws the ire of lawmakers. While imperfect, the civil service system is a fairer avenue to address wrongdoing at the employee level. The Holman Rule is primed for abuse and should be retired from use.

Thank you for your ongoing work and interest in improving the committee rules of the House and Senate. We welcome the opportunity to discuss our proposals with you. Please contact Peter Tyler ([ptyler@pogo.org](mailto:ptyler@pogo.org)) or Mandy Smithberger ([msmithberger@pogo.org](mailto:msmithberger@pogo.org)) at 202-347-1122 regarding any questions or comments you may have.

Sincerely,



Danielle Brian  
Executive Director

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<sup>10</sup> Congressional Research Service, *The Holman Rule (House Rule XXI, Clause 2(b))*, March 23, 2018. [https://www.everycrsreport.com/files/20180323\\_R44736\\_fce65125e329096d6df10b9678f4736283bbbae7.pdf](https://www.everycrsreport.com/files/20180323_R44736_fce65125e329096d6df10b9678f4736283bbbae7.pdf) (Downloaded November 8, 2018); Jenna Portnoy and Lisa Rein, "House Republicans revive obscure rule that allows them to slash the pay of individual federal workers to \$1," *The Washington Post*, January 5, 2017.

[https://www.washingtonpost.com/local/virginia-politics/house-republicans-revive-obscure-rule-that-could-allow-them-to-slash-the-pay-of-individual-federal-workers-to-1/2017/01/04/4e80c990-d2b2-11e6-945a-76f69a399dd5\\_story.html](https://www.washingtonpost.com/local/virginia-politics/house-republicans-revive-obscure-rule-that-could-allow-them-to-slash-the-pay-of-individual-federal-workers-to-1/2017/01/04/4e80c990-d2b2-11e6-945a-76f69a399dd5_story.html) (Downloaded November 9, 2018)