

December 7, 2021

Dear Chairman McGovern, Ranking Member Cole, and members of the House Committee on Rules:

We write in strong support of the Jacobs amendment to the *Protecting Our Democracy Act*, amendment #12, which would allow all members who serve on committees the authority to designate one personal office staffer as eligible to apply for a Top Secret/Sensitive Compartmented Information (TS/SCI) clearance. We urge you to determine the amendment is made in order and provide for its consideration on the House floor.¹

Congress routinely considers legislative measures and receives information that the Executive branch deems classified. While members of Congress do not need clearances by virtue of their offices, as a matter of accommodation the House and Senate require staff to obtain clearances. Each member of the House is allowed under House Rules to designate two personal office aides as eligible to apply for a Top Secret clearance.

Over the decades, the Executive branch has increasingly classified large amounts of information at the TS/SCI level, which personal office staff cannot access. By comparison, hundreds of thousands of Executive branch employees, including interns, hold TS/SCI clearances, with equivalent access for foreign officials. Since the late 1970s, the House has only provided for committee and leadership staff eligibility to apply for TS/SCI clearances — pursuant to an informal agreement between then-Speaker O’Neill and the CIA director intended to *reduce* the overall number of people in government with clearances — an effort that was not upheld by the Executive branch.²

The *de facto* clearances policy undermined the ability of individual members of Congress to hold the Executive branch to account and has made members unduly reliant upon staff outside their offices. Ironically, some staff who perform this work have TS/SCI clearances at the time they are hired, but are not allowed to use their clearances for their congressional work.

¹ The amendment is available online at https://amendments-rules.house.gov/amendments/JACOCA_033_xml211202115449942.pdf.

² See “A Primer on Congressional Staff Clearances: Which Staff Can Obtain Security Clearances, at What Levels, and Who Decides?” Daniel Schuman and Mandy Smithberger (February 2020), https://docs.pogo.org/report/2020/A_Primer_on_Congressional_Staff_Clearances_2020-02-05.pdf. For the correspondence between the Speaker and the CIA Director, see https://s3.amazonaws.com/demandprogress/documents/1978_correspondence_on_clearances.pdf

This untenable situation prompted the Senate to recently change its practices. Now every senator is empowered to designate one personal office staffer as eligible to apply for a TS/SCI clearance.³ Staff still must complete the Executive branch-administered clearance review process and, if they are approved, can only access information if they can demonstrate a need-to-know. However, senators now will have a single personal office staffer who reports directly to them and will be allowed to attend high level briefings, review Executive branch materials, enter classified facilities, and provide a second set of eyes and ears during important conversations.⁴

The Jacobs amendment would provide for members of the House what is afforded to members of the Senate: one personal office staffer eligible to apply for a TS/SCI so long as the member serves on a committee. It would further provide training for that staffer on the responsibilities associated with access, including training in counterintelligence.

This policy change is long overdue. While legislation is not necessary to address the practice of not providing members with staffers who can obtain a TS/SCI clearance, in the absence of new procedures instituted by the Office of House Security, the House of Representatives should have the opportunity to vote on whether individual members should be provided the support they need for the performance of their Constitutional duties as relates to classified matters. We urge you to support the amendment.

Sincerely yours,

Accountability Lab
Brennan Center for Justice at NYU School of Law
Center for Democracy & Technology
Citizens for Responsibility and Ethics in Washington (CREW)
Demand Progress
Electronic Frontier Foundation
Electronic Privacy Information Center (EPIC)
FreedomWorks
Friends Committee on National Legislation

³ "Senate Personal Offices Now Allowed a Staffer With TS/SCI Clearance," First Branch Forecast (Nov. 16, 2021) <https://firstbranchforecast.com/2021/11/16/senate-personal-offices-now-allowed-a-staffer-with-ts-sci-clearance/>

⁴ A more in-depth discussion of the importance of expanding TS/SCI clearance available can be found in the testimony of Mandy Smithberger before the House Legislative Branch Appropriations Subcommittee (March 2020) <https://www.congress.gov/116/meeting/house/110517/witnesses/HHRG-116-AP24-Wstate-SmithbergerM-20200304.pdf>

Government Accountability Project
Government Information Watch
GovTrack.us
Mainers for Accountable Leadership Action
National Security Counselors
New Democracy Partners
Open The Government
Project On Government Oversight
Protect Democracy
Restore The Fourth
S.T.O.P. - The Surveillance Technology Oversight Project
Win Without War