

117TH CONGRESS
1ST SESSION

S. 2457

To maintain the free flow of information to the public by establishing appropriate limits on the federally compelled disclosure of information obtained as part of engaging in journalism, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 22, 2021

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To maintain the free flow of information to the public by establishing appropriate limits on the federally compelled disclosure of information obtained as part of engaging in journalism, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protect Reporters from
5 Excessive State Suppression Act” or the “PRESS Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) COVERED JOURNALIST.—The term “covered
2 journalist” means a person who gathers, prepares,
3 collects, photographs, records, writes, edits, reports,
4 or publishes news or information that concerns local,
5 national, or international events or other matters of
6 public interest for dissemination to the public.

7 (2) COVERED SERVICE PROVIDER.—

8 (A) IN GENERAL.—The term “covered
9 service provider” means any person that, by an
10 electronic means, stores, processes, or transmits
11 information in order to provide a service to cus-
12 tomers of the person.

13 (B) INCLUSIONS.—The term “covered
14 service provider” includes—

15 (i) a telecommunications carrier and a
16 provider of an information service (as such
17 terms are defined in section 3 of the Com-
18 munications Act of 1934 (47 U.S.C. 153));

19 (ii) a provider of an interactive com-
20 puter service and an information content
21 provider (as such terms are defined in sec-
22 tion 230 of the Communications Act of
23 1934 (47 U.S.C. 230));

(iii) a provider of remote computing service (as defined in section 2711 of title 18, United States Code); and

(iv) a provider of electronic communication service (as defined in section 2510 of title 18, United States Code) to the public.

(3) DOCUMENT.—The term “document” means writings, recordings, and photographs, as those terms are defined by Federal Rule of Evidence 1001 (28 U.S.C. App.).

(4) FEDERAL ENTITY.—The term “Federal entity” means an entity or employee of the judicial or executive branch or an administrative agency of the Federal Government with the power to issue a subpoena or issue other compulsory process.

(5) JOURNALISM.—The term “journalism” means gathering, preparing, collecting, photographing, recording, writing, editing, reporting, or publishing news or information that concerns local, national, or international events or other matters of public interest for dissemination to the public.

(6) PERSONAL ACCOUNT OF A COVERED JOURNALIST.—The term “personal account of a covered

journalist” means an account with a covered service provider used by a covered journalist that is not provided, administered, or operated by the employer of the covered journalist.

(7) **PERSONAL TECHNOLOGY DEVICE OF A COVERED JOURNALIST.**—The term “personal technology device of a covered journalist” means a handheld communications device, laptop computer, desktop computer, or other internet-connected device used by a covered journalist that is not provided or administered by the employer of the covered journalist.

(8) **PROTECTED INFORMATION.**—The term “protected information” means any information identifying a source who provided information as part of engaging in journalism, and any records, contents of a communication, documents, or information that a covered journalist obtained or created as part of engaging in journalism.

SEC. 3. LIMITS ON COMPELLED DISCLOSURE FROM COVERED JOURNALISTS.

In any matter arising under Federal law, a Federal entity may not compel a covered journalist to disclose protected information, unless a court in the judicial district in which the subpoena or other compulsory process is, or will be, issued determines by a preponderance of the evi-

1 dence, after providing notice and an opportunity to be
 2 heard to the covered journalist that—

3 (1) disclosure of the protected information is
 4 necessary to prevent, or to identify any perpetrator
 5 of, an act of terrorism against the United States; or

6 (2) disclosure of the protected information is
 7 necessary to prevent a threat of imminent violence,
 8 significant bodily harm, or death.

9 **SEC. 4. LIMITS ON COMPELLED DISCLOSURE FROM COV-**
 10 **ERED SERVICE PROVIDERS.**

11 (a) CONDITIONS FOR COMPELLED DISCLOSURE.—In
 12 any matter arising under Federal law, a Federal entity
 13 may not compel a covered service provider to provide testi-
 14 mony or any document consisting of any record, informa-
 15 tion, or other communication that relates to a business
 16 transaction between the covered service provider and a
 17 covered journalist, including testimony or any document
 18 relating to a personal account of a covered journalist or
 19 a personal technology device of a covered journalist, unless
 20 a court in the judicial district in which the subpoena or
 21 other compulsory process is, or will be, issued determines
 22 by a preponderance of the evidence that there is a reason-
 23 able threat of imminent violence unless the testimony or
 24 document is provided, and issues an order authorizing the

1 Federal entity to compel the disclosure of the testimony
2 or document.

3 (b) NOTICE TO COURT.—A Federal entity seeking to
4 compel the provision of testimony or any document de-
5 scribed in subsection (a) shall inform the court that the
6 testimony or document relates to a covered journalist.

7 (c) NOTICE TO COVERED JOURNALIST AND OPPOR-
8 TUNITY TO BE HEARD.—

9 (1) IN GENERAL.—A court may authorize a
10 Federal entity to compel the provision of testimony
11 or a document under this section only after the Fed-
12 eral entity seeking the testimony or document pro-
13 vides the covered journalist who is a party to the
14 business transaction described in subsection (a)—

15 (A) notice of the subpoena or other com-
16 pulsory request for such testimony or document
17 from the covered service provider not later than
18 the time at which such subpoena or request is
19 issued to the covered service provider; and

20 (B) an opportunity to be heard before the
21 court before the time at which the provision of
22 the testimony or document is compelled.

23 (2) EXCEPTION TO NOTICE REQUIREMENT.—

24 (A) IN GENERAL.—Notice and an oppor-
25 tunity to be heard under paragraph (1) may be

1 delayed for not more than 45 days if the court
2 involved determines there is clear and con-
3 vincing evidence that such notice would pose a
4 clear and substantial threat to the integrity of
5 a criminal investigation, or would present an
6 imminent risk of death or serious bodily harm.

7 (B) EXTENSIONS.—The 45-day period de-
8 scribed in subparagraph (A) may be extended
9 by the court for additional periods of not more
10 than 45 days if the court involved makes a new
11 and independent determination that there is
12 clear and convincing evidence that providing no-
13 tice to the covered journalist would pose a clear
14 and substantial threat to the integrity of a
15 criminal investigation, or would present an im-
16 minent risk of death or serious bodily harm
17 under current circumstances.

18 **SEC. 5. LIMITATION ON CONTENT OF INFORMATION.**

19 The content of any testimony, document, or protected
20 information that is compelled under sections 3 or 4 shall—

21 (1) not be overbroad, unreasonable, or oppres-
22 sive, and as appropriate, be limited to the purpose
23 of verifying published information or describing any
24 surrounding circumstances relevant to the accuracy
25 of such published information; and

1 (2) be narrowly tailored in subject matter and
2 period of time covered so as to avoid compelling the
3 production of peripheral, nonessential, or speculative
4 information.

5 **SEC. 6. RULE OF CONSTRUCTION.**

6 Nothing in this Act shall be construed to—

7 (1) apply to civil defamation, slander, or libel
8 claims or defenses under State law, regardless of
9 whether or not such claims or defenses, respectively,
10 are raised in a State or Federal court; or

11 (2) prevent the Federal Government from pur-
12 suing an investigation of a covered journalist or or-
13 ganization that is—

14 (A) suspected of committing a crime;

15 (B) a witness to a crime unrelated to en-
16 gaging in journalism;

17 (C) suspected of being an agent of a for-
18 eign power, as defined in section 101 of the
19 Foreign Intelligence Surveillance Act of 1978
20 (50 U.S.C. 1801);

21 (D) an individual or organization des-
22 ignated under Executive Order 13224 (50
23 U.S.C. 1701 note; relating to blocking property
24 and prohibiting transactions with persons who

1 commit, threaten to commit, or support ter-
2 rorism);

3 (E) a specially designated terrorist, as that
4 term is defined in section 595.311 of title 31,
5 Code of Federal Regulations (or any successor
6 thereto); or

7 (F) a terrorist organization, as that term
8 is defined in section 212(a)(3)(B)(vi)(II) of the
9 Immigration and Nationality Act (8 U.S.C.
10 1182(a)(3)(B)(vi)(II)).

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