

(A) facilities and equipment placed in service before December 30, 2020; and

(B) engineering integration costs incurred during the period beginning on the date of enactment of this Act and ending on December 30, 2020.

(5) FEES.—The cost of administering a loan made under this subsection shall not exceed \$100,000.

(6) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this subsection for each of fiscal years 2009 through 2013.

(d) SENSE OF THE SENATE ON PURCHASE OF PLUG-IN ELECTRIC DRIVE VEHICLES.—It is the sense of the Senate that, to the maximum extent practicable, the Federal Government should implement policies to increase the purchase of plug-in electric drive vehicles by the Federal Government.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. BAUCUS. Mr. President, I ask unanimous consent that the committee on Armed Services be authorized to meet during the session of the Senate on Tuesday July 29, 2008, at 5:30 p.m..

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on July 29, 2008 at 10 a.m., to conduct a committee hearing entitled "State of the Insurance Industry: Examining the Current Regulatory and Oversight Structure."

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on Tuesday, July 29, 2008, at 10:30 a.m., in room 253 of the Russell Senate Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on Tuesday, July 29, 2008, at 10 a.m., in 215 Dirksen Senate Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, July 29, 2008, at 2:15 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HEALTH EDUCATION, LABOR, AND PENSIONS

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Com-

mittee on Health, Education, Labor, and Pensions be authorized to meet, during the session of the Senate, to conduct a hearing entitled "Dangerous Dust: Is OSHA Doing Enough to Protect Workers?" on Tuesday, July 29, 2008. The hearing will commence at 10 a.m. in room 430 of the Dirksen Senate Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Senate Committee on the Judiciary be authorized to meet during the session of the Senate, to conduct a hearing entitled "Music and Radio in the 21st Century: Assuring Fair Rates and Rules Across Platforms" on Tuesday, July 29, 2008, at 10 a.m., in room SD-226 of the Dirksen Senate Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on July 29, 2008, at 2:30 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON CLEAN AIR AND NUCLEAR SAFETY

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Subcommittee on Clean Air and Nuclear Safety, Committee on Environment and Public Works, be authorized to meet during the session of the Senate on Tuesday, July 29, 2008 in room 406 of the Dirksen Senate Office Building at 10 a.m. to hold a hearing entitled, "EPA's Clean Air Interstate Rule (CAIR): Recent Court Decision and Its Implications."

The PRESIDING OFFICER. Without objection, it is so ordered.

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on Tuesday, July 29, at 9:30 a.m., to conduct a hearing entitled, "Payroll Tax Abuse: Businesses Owe Billions and What Needs To Be Done About It."

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGES OF THE FLOOR

Mr. NELSON of Florida. Mr. President, I ask unanimous consent that Catherine Zebrowski, a fellow in Senator BROWN's office, be granted the privilege of the floor during consideration of S. 3335, the Jobs, Energy, Families, and Disaster Relief Act of 2008.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the following

Finance Committee staff be allowed floor privileges: Eric Taylor, Damian Kudelka, Helia Jazayeri, Mollie Lane, Adam Lythgoe, Ashleen Williams, Susan Hinck, Kevin Olp, Lucan Hamilton, Katie Meyer, Matt Smith, Connie Cookson, Hy Hinojosa, Mary Baker, and Bridget Mallon.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. GRASSLEY. I ask unanimous consent that Paraskevi Maddox, Lyndsey Arnold, and Cale Kassel be granted the privilege of the floor during the duration of the 110th Congress.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR WEDNESDAY, JULY 30, 2008

Mr. SALAZAR. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand adjourned until 10 a.m. tomorrow, July 30; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate then resume consideration of the motion to proceed to S. 2035, the media shield legislation. I further ask that the hour prior to the cloture vote be equally divided and controlled by the two leaders or their designees, with Senators permitted to speak for up to 10 minutes each, with the final 20 minutes under the control of the two leaders, with the majority leader controlling the final 10 minutes prior to the vote and with 10 minutes of majority time under the control of Senator LEAHY; that upon the use or yielding back of time, the Senate proceed to vote on the motion to invoke cloture on the motion to proceed.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. SALAZAR. Mr. President, Senators should expect the first vote of the day to begin tomorrow around 11 a.m. That vote will be on the motion to proceed to the media shield bill. If cloture is not invoked, Senators should be prepared for a cloture vote on the motion to proceed to the tax extenders bill, S. 3335.

ORDER FOR ADJOURNMENT

Mr. SALAZAR. If there is no further business to come before the Senate, I ask unanimous consent that it stand adjourned under the previous order, following the remarks of Senator ARLEN SPECTER.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Pennsylvania.

FREE FLOW OF INFORMATION ACT

Mr. SPECTER. Mr. President, I have sought recognition to speak on the

Free Flow of Information Act, which is the reporters' privilege legislation. At the outset, I thank the cosponsors, Senators SCHUMER, LUGAR, DODD, and GRAHAM. I especially thank Senator LUGAR for his contribution to this legislation, because he was the first to take a stand for this issue some time ago.

This legislation is very important to maintain the flow of information to the American people from the newspapers and radio and television stations. It is necessary because we have seen in recent times a flurry of subpoenas being issued to reporters to disclose their confidential sources. A reporter's source of information depends upon their being able to fulfill a commitment of confidentiality. It is unnecessary to recite the long history of the investigative reporting which has provided so much good to the American people or, for that matter, the people of the world. We have had reporters ferret out corruption in government, misfeasance, and wrongdoing. Senators turn the first part of every day to the newspapers to see what is occurring in the world. Frequently in the mix of the news, there are investigative reports which tell Senators more than even our staffs know. I believe Thomas Jefferson put it best in the founding days of the Republic, when he said that if he had to choose newspapers without government or government without newspapers, he would choose newspapers without government.

This legislation passed the Senate Judiciary Committee by the decisive vote of 15 to 4. A version passed the House of Representatives by an overwhelming margin of 398 to 21. It is worth noting that both of the presumptive candidates for President are supportive of this legislation. Senator OBAMA is a cosponsor, and Senator MCCAIN has publicly confirmed that he would vote for this legislation. A group of some 40 sitting State attorneys general, including both Democrats and Republicans, have written in support of this legislation. More than 100 newspapers from all parts of the country have endorsed this legislation, including the Washington Post, the Washington Times, the New York Times, and the Philadelphia Inquirer. I will make a part of the RECORD a full list of those newspapers and public media operations in support of this legislation.

There have been some 72 subpoenas issued since 2006. The chilling effect has been overwhelming, in part because of the issuance of subpoenas and contempt citations. For example, the case of Judith Miller of the New York Times has received extensive publicity. She was jailed for around 85 days for failing to disclose the source of information she had in the case involving the outing of CIA agent Valerie Plame. It has always been a mystery to me why Judith Miller was held in contempt, when it was known that Deputy Secretary of State Armitage was the source of the information. But a special prosecutor

subpoenaed numerous witnesses and conducted a very high profile publicity investigation. Ultimately, Judith Miller spent 85 days in jail under very unpleasant circumstances. I can personally attest to the conditions because Michael O'Neal, my chief counsel when I chaired the Judiciary Committee, and I visited her in the Virginia prison where she was detained. The legislation which we are proposing is necessary to maintain the flow of information.

I think it is vital to emphasize that this legislation benefits the American people, allowing them access to the news and information that results from investigative reporting. Investigative reporting has done so much for the public welfare in disclosing fraud, corruption, misfeasance, and wrongdoing at all levels of the Government, as well as at all levels of private, corporate, and public life.

This issue and the vote which is imminent pose a problem for this Senator because of the practice which has evolved to preclude amendments from being offered. We are only facing tomorrow the motion for cloture on the motion to proceed. I do think we ought to proceed to this bill. It is my hope that the majority leader will not act to preclude other Senators from offering amendments. This is a subject I have addressed at considerable length on the global warming bill. I have talked about it on the FAA bill. I have discussed it with the oil speculators bill. It is a matter of great concern as to what has happened to the operation of the Senate.

When I came to this world's greatest deliberative body some 28 years ago, the tradition of the Senate had been maintained that any Senator could offer virtually any amendment on any bill at any time. That was the great unique quality of the Senate and the ability of any Senator to offer an amendment to call public attention to an important issue, to have the floor of the Senate to publicize the issue and to move for the enactment of legislation. But what has happened, surprisingly only in the last 15 years—and it has happened by majority leaders of both parties—is that a procedure has been adopted on what is called filling the tree. That is an arcane expression, known only inside the Beltway. But let me explain it.

When a bill is on the agenda, it is the prerogative of the majority leader to call for action of the Senate. Then the majority leader, under Senate practice and custom, has the right of first recognition. So that the rule that the first Senator to ask for recognition gets the recognition is true, unless the majority leader has sought recognition. On cases of a tie, it is the majority leader. As a matter of practice, nobody challenges the majority leader's right to first recognition. So after the bill is before the Senate, the majority leader then offers an amendment. Then he offers another amendment. Without going into all of the details, a procedure is adopted

where no other Senator can offer an amendment.

What has happened on global warming, for example, where I came to the floor and outlined four amendments which I intended to offer on a very important bill, I was precluded from offering them, because the Senate majority leader had taken action to put this procedure in effect on so-called filling the tree. The FAA bill came up, which had funding for a new satellite system for air safety. I had amendments to offer, very important for my State, on overflights from the Philadelphia International Airport and for scheduling issues, where the airport was overscheduled, leading to long delays; people, myself included, sitting on the tarmac waiting to take off.

The tearing that I undertake is a result, for those who see me wiping my eyes, not for any sorrow about what I am doing but a consequence of having Hodgkin's. It makes a fellow pale and thin. Tough but tolerable, as I put it, and I have been able to stay on the job. But if anybody is watching on C-SPAN 2, which is highly doubtful, they may wonder why I am tearing. I am not crying. I am tearing because of the impact of all of the chemicals from the treatment of Hodgkin's.

At any rate, I was commenting about the Philadelphia airport. This affects the State of New Jersey. The Presiding Officer is a Senator from the State of New Jersey. You sit on the tarmac at the Philadelphia airport for a long time because they are overbooked. It is like a restaurant that has 100 seats and they put in 150 patrons. Well, you can't get your table on a reservation. You have a flight leaving at 7 a.m. You wait until many other planes have left. Or when you land, the airport is overbooked, and it is not a very pleasant sensation to circle the city of Philadelphia for a long period of time in the fog and in the rain, wondering how good those air controllers are. They are pretty good, but it is something you wonder about in any event.

We weren't able to offer amendments on the FAA bill. We haven't been able to offer amendments on the oil speculators bill. The headlines in the newspapers over the weekend were: Republicans block oil speculators bill. They recited the Senators from the Philadelphia region, and they noted that the distinguished Senator who is presiding now, Senator MENENDEZ, voted in favor of advancing the bill, as did Senator LAUTENBERG, as did Senator CASEY, as did Senator CARPER, as did Senator BIDEN. Only ARLEN SPECTER voted not to advance the bill. You don't get the picture in a short story. You don't get the picture in the recitation of the vote that I voted against cloture because neither I nor any other Senator had the opportunity to offer amendments. So that if we get to that point, I am conflicted as to what to do. But I don't think we will face that tomorrow with the motion to proceed. I am hopeful we will pass that by a very substantial majority.

There have been opponents who have come to the floor to debate this bill. It is important to note that as a result of the hearings which were held when I was chairman, Senator KYL stated there have been no hearings on this bill in the 110th Congress. Well, when I chaired the Judiciary Committee in the 109th Congress in 2005 and 2006, we had three hearings on the subject and went into the issue in some detail. Senator KYL said the Government could not get information to investigate an act of terrorism. That is not so. The bill states specifically that it is reasonably likely to stop, prevent, or mitigate any, or identify the perpetrator of an act of international terrorism or domestic terrorism, there will be no shield.

Those who have raised objections to the bill have been taken into account. The bill has been substantially improved.

For example, the bill now explicitly states that sensitive governmental information will not be disclosed in open court. The provisions have always been subjected to the Classified Information Protection Act. It had always been available to prosecutors. But when the concern was raised, we put in the specific provision that a "Federal court may receive and consider submissions from the parties in camera or under seal, and where the court determines appropriate, *ex parte*" in order to protect sensitive information.

The bill further provides that the definition of a covered person has been narrowed to ensure it protects only legitimate journalists. The definition of the Second Circuit has been adopted. That definition has worked very well. It requires that the individual have the intent to distribute the information to the public and that he or she had such intent at the time that he or she gathered the information.

The provision also provides that even if terrorists pose as journalists, they do not qualify for the act's protections. The modifications create an expedited appeals process, ensuring that litigation regarding whether the privilege applies will be quickly resolved.

This is motivated by the case involving USA Today reporter, Tony Loci, who was held in contempt of court and fined \$5,000 a day. The judge entered an order that her employer or friends and relatives could not pay it. Fortunately for Tony Loci, that case was settled so the contempt citation did not stand.

Numerous journalists across the country have seen what happened to Tony Loci and Judith Miller. It has had a very chilling effect on their activities. People who might give sensitive information under the promises of confidentiality are reluctant to share that information.

Also, under the revisions, prosecutors will not have to prove they have exhausted all other options for finding the information or the information is essential to their investigation.

So what we have, in essence, is very important legislation. It is very impor-

tant to the functioning of the democracy that there be a free press to report to the American people what has happened, especially on investigative reporting. You cannot have a free press if a reporter cannot obtain information from a confidential source, promise confidentiality, and then deliver. And you cannot have a free press if people such as Tony Loci and Judith Miller are subjected to contempt citations—large fines with Tony Loci, actual imprisonment with Judith Miller of some 85 days.

So this bill is long past due. I am glad to see it brought to the floor. I am hopeful the majority leader will not pursue a course of filling the tree to preclude amendments. I am hopeful we can return to the day when the Senate regains its luster as the world's greatest deliberative body, which means that any 1 of the other 99 Senators can offer amendments, and that it is not just the one Senator, the senior Senator from Nevada, who has the position of majority leader, who can, in effect, dictate what happens in the Senate.

Yesterday, we had a heated exchange on the floor. When we finished voting on the cloture motion, the majority leader refused to allow a quorum call to be taken off. If anyone may be watching on C-SPAN, a quorum call is when there is the absence of a quorum. There are frequent quorum calls when no one seeks recognition. But it is a relatively infrequent occurrence that there is quorum. A quorum means 51 or more Senators. Right now, we are 50 Senators short of a quorum. Most of the time, you only have a few Senators on the floor who may be speaking—three or four. When there are votes, there are many Senators on the floor.

But it is a relatively rare occurrence that a quorum is present. So if someone suggests there is an absence of a quorum, there is a quorum call. And a quorum call cannot be taken off except by unanimous consent or to have a live quorum or to have a motion for the attendance of absent Senators.

But, invariably, when there is a quorum call and someone asks unanimous consent—or virtually invariably—it is granted unless somebody wants to hold up an action on something that is pending. But I have not seen, in my tenure in the Senate, a denial of an application to eliminate the quorum call so speeches can be made.

I and other Senators were waiting for more than an hour. And in conjunction with what the majority leader has done on filling the tree in denying 99 other Senators—mostly minority Senators—the right to offer amendments and refusing to allow the quorum to be lifted, I used the word "tyrannical," and I stand by that.

This body is a great body and has earned great prestige worldwide and I think has earned the stature of the world's greatest deliberative body because of the ability of Senators to offer amendments and the ability of Senators to speak. To be on this floor in a

quorum call and to be denied an opportunity to speak is not quite a denial of my first-amendment rights. I can go to the Radio and TV Gallery and call a news conference or walk out and talk to reporters or go on the steps. But having been elected to the Senate, and having a commission to serve here, when no one is on the floor speaking, and there is no reason why I ought to be denied an opportunity to speak except for the technicality of a quorum call, I take umbrage at it. It is just one indication of how we have to go back to the—well, you might call them the old days. Maybe they were good old days, where the Senate functioned with every Senator being able to offer amendments.

A critical part of the functioning of our Government, I suggest, is the ability of the free press to function and reporters to get confidential information, to be able to promise confidentiality and to be able to deliver without being fearful of being held in contempt of court and being put in jail.

Mr. President, before yielding the floor, I ask unanimous consent that the full text of a substitute be printed in the RECORD, which contains the modifications referred to in the course of my oral statement.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Free Flow of Information Act of 2008".

SEC. 2. COMPELLED DISCLOSURE FROM COVERED PERSONS.

(a) CONDITIONS FOR COMPELLED DISCLOSURE.—In any proceeding or in connection with any issue arising under Federal law, a Federal entity may not compel a covered person to comply with a subpoena, court order, or other compulsory legal process seeking to compel the production of protected information, unless a Federal court in the jurisdiction in which the subpoena, court order, or other compulsory legal process has been or would be issued determines, by a preponderance of the evidence, after providing notice and an opportunity to be heard to such covered person—

(1) that the party seeking to compel production of such protected information has exhausted all reasonably known alternative sources of the protected information; and

(2) that—

(A) in a criminal investigation or prosecution—

(i) there are reasonable grounds to believe, based on information obtained from a source other than the covered person, that a crime has occurred;

(ii) there are reasonable grounds to believe, based on information obtained from a source other than the covered person, that the protected information sought is essential to the investigation or prosecution or to the defense against the prosecution; and

(iii) nondisclosure of the information would be contrary to the public interest, taking into account both the interest in compelling disclosure (including the extent of any harm to national security) and the public interest in gathering and disseminating the information or news conveyed and maintaining the free flow of information; or

(B) in a matter other than a criminal investigation or prosecution—

(i) based on information obtained from a source other than the covered person, the protected information sought is essential to the resolution of the matter; and

(ii) the interest in disclosure clearly outweighs the public interest in gathering and disseminating the information or news conveyed and maintaining the free flow of information.

(b) **LIMITATIONS ON DEMAND FOR PROTECTED INFORMATION.**—A subpoena, court order, or other compulsory legal process seeking protected information that is compelled under subsection (a) shall, to the extent possible be narrowly tailored in purpose, subject matter, and period of time covered so as to avoid compelling production of peripheral, non-essential, or speculative information.

SEC. 3. EXCEPTION RELATING TO EYEWITNESS OBSERVATION OR CRIMINAL OR TORTIOUS CONDUCT BY THE COVERED PERSON.

(a) **IN GENERAL.**—Section 2 shall not apply to any protected information obtained as the result of the eyewitness observations by a covered person of alleged criminal conduct or the commission of alleged criminal or tortious conduct by the covered person, including any physical evidence or visual or audio recording of the observed conduct.

(b) **EXCEPTIONS.**—

(1) **IN GENERAL.**—This section shall not apply, and section 2 shall apply, if the alleged criminal or tortious conduct is the act of communicating information to a covered person.

(2) **CLASSIFIED INFORMATION.**—Notwithstanding paragraph (1), this section shall not apply, and section 5 shall apply, if the alleged criminal or tortious conduct is an unauthorized release of properly classified information.

SEC. 4. EXCEPTION TO PREVENT AN ACT OF TERRORISM, DEATH, KIDNAPPING, SEXUAL ABUSE OF A MINOR, OR SUBSTANTIAL BODILY INJURY.

(a) **IN GENERAL.**—Section 2 shall not apply to any protected information that a Federal court finds is reasonably likely to stop, prevent, or mitigate, or identify the perpetrator of, an act of international terrorism or domestic terrorism, as those terms are defined in section 2331 of title 18, United States Code.

(b) **OTHER ACTIVITIES.**—Section 2 shall not apply to any protected information that a Federal court finds is reasonably likely to stop, prevent, or mitigate a specific case of—

- (1) death;
- (2) kidnapping;
- (3) substantial bodily harm;
- (4) conduct that would violate section 2251 or section 2252 of title 18, United States Code (relating to the sexual exploitation of children and child pornography); or
- (5) incapacitation or destruction of critical infrastructure (as defined in section 1016(e) of the USA PATRIOT Act (42 U.S.C. 5195c(e))).

SEC. 5. EXCEPTION TO PREVENT HARM TO THE NATIONAL SECURITY.

Section 2 shall not apply to any protected information, and a Federal court shall compel the disclosure of such protected information, if the court—

- (1) finds that the protected information—
 - (A) would assist in stopping or preventing significant and articulable harm to national security; or
 - (B) relates to an unauthorized release of properly classified information that has caused or will cause significant and articulable harm to the national security; and
 - (2) takes into account the balancing of the harm described in paragraph (1) against the public interest in gathering and disseminating the information or news conveyed.

SEC. 6. COMPELLED DISCLOSURE FROM COMMUNICATIONS SERVICE PROVIDERS.

(a) **CONDITIONS FOR COMPELLED DISCLOSURE.**—If any document or other information from the account of a person who is known to be, or reasonably likely to be, a covered person is sought from a communications service provider, sections 2 through 5 shall apply in the same manner that such sections apply to any document or information sought from a covered person.

(b) **NOTICE AND OPPORTUNITY PROVIDED TO COVERED PERSONS.**—A Federal court may compel the disclosure of a document or other information described in subsection (a) only after the covered person from whose account such document or other information is sought has been given—

(1) notice of the subpoena, court order, or other compulsory legal process for such document or other information from the communications service provider not later than the time at which such subpoena, court order, or other compulsory legal process is issued to the communications service provider; and

(2) an opportunity to be heard by the court.

(c) **EXCEPTION TO NOTICE REQUIREMENT.**—Upon motion by a Federal entity, notice and opportunity to be heard under subsection (b) may be delayed for not more than 45 days if the court determines that there is substantial basis for believing that such notice would pose a substantial threat to the integrity of a criminal or national security investigation or intelligence gathering, or that exigent circumstances exist. This period may be extended by the court for an additional period of not more than 45 days each time the court makes such a determination.

SEC. 7. SOURCES AND WORK PRODUCT PRODUCED WITHOUT PROMISE OR AGREEMENT OF CONFIDENTIALITY.

Nothing in this Act shall supersede, dilute, or preempt any law or court decision regarding a subpoena, court order, or other compulsory legal process relating to disclosure by a covered person or communications service provider of—

- (1) information identifying a source who provided information without a promise or agreement of confidentiality made by the covered person; or
- (2) records or other information, or contents of a communication obtained without a promise or agreement that such records, other information, or contents of a communication would be confidential.

SEC. 8. PROCEDURES FOR REVIEW AND APPEAL.

(a) **CONDITIONS FOR EX PARTE REVIEW OR SUBMISSIONS UNDER SEAL.**—With regard to any determination made by a Federal court under this Act, upon a showing of good cause, that Federal court may receive and consider submissions from the parties in camera or under seal, and if the court determines it is necessary, *ex parte*.

(b) **CONTEMPT OF COURT.**—With regard to any determination made by a Federal court under this Act, a Federal court may find a covered person to be in civil or criminal contempt if the covered person fails to comply with an order of a Federal court compelling disclosure of protected information.

(c) **TO PROVIDE FOR TIMELY DETERMINATION.**—With regard to any determination to be made by a Federal court under this Act, that Federal court, to the extent practicable, shall make that determination not later than 30 days after the date of receiving a motion requesting the court make that determination.

(d) **EXPEDITED APPEAL PROCESS.**—

(1) **IN GENERAL.**—The courts of appeal shall have jurisdiction—

(A) of appeals by a Federal entity or covered person of an interlocutory order of a Federal court under this Act; and

(B) in an appeal of a final decision of a Federal court by a Federal entity or covered person, to review any determination of a Federal court under this Act.

(2) **EXPEDITED APPEALS.**—It shall be the duty of a Federal court to which an appeal is made under this subsection to advance on the docket and to expedite to the greatest possible extent the disposition of that appeal.

SEC. 9. RULE OF CONSTRUCTION.

Nothing in this Act may be construed to—

(1) preempt any State law relating to defamation, slander, or libel;

(2) modify the requirements of section 552a of title 5, United States Code, or Federal laws or rules relating to grand jury secrecy (except that this Act shall apply in any proceeding and in connection with any issue arising under that section or the Federal laws or rules relating to grand jury secrecy);

(3) preclude a plaintiff from asserting a claim of defamation against a covered person, regardless of whether the claim is raised in a State or Federal court; or

(4) create new obligations, or affect or modify the authorities or obligations of a Federal entity with respect to the acquisition or dissemination of information pursuant to the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

SEC. 10. DEFINITIONS.

In this Act:

(1) **COMMUNICATIONS SERVICE PROVIDER.**—The term “communications service provider”—

(A) means a person that transmits information of the customer’s choosing by electronic means; and

(B) includes a telecommunications carrier, an information service provider, an interactive computer service provider, and an information content provider (as such terms are defined in sections 3 or 230 of the Communications Act of 1934 (47 U.S.C. 153 and 230)).

(2) **COVERED PERSON.**—The term “covered person”—

(A) means a person who—

(i) with the primary intent to investigate events and procure material in order to disseminate to the public news or information concerning local, national, or international events or other matters of public interest, regularly gathers, prepares, collects, photographs, records, writes, edits, reports, or publishes on such matters by—

(I) conducting interviews;

(II) making direct observation of events; or

(III) collecting reviewing or analyzing original writings, statements, communications, reports, memoranda, records, transcripts, documents, photographs, recordings, tapes, materials, data or other information whether in paper, electronic or other form; and

(ii) has such intent at the inception of the newsgathering process;

(B) includes a supervisor, employer, parent company, subsidiary, or affiliate of such person; and

(C) does not include any person—

(i) who is a foreign power or an agent of a foreign power, or as to whom there is probable cause to believe that the person is a foreign power or an agent of a foreign power, as those terms are defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801);

(ii) who is a foreign terrorist organization designated under section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a));

(iii) who is designated as a Specially Designated Global Terrorist by the Department of the Treasury under Executive Order Number 13224 (50 U.S.C. 1701 note);

(iv) who is a specially designated terrorist, as that term is defined in section 595.311 of title 31, Code of Federal Regulations (or any successor thereto); or

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

(3) DOCUMENT.—The term “document” means writings, recordings, and photographs, as those terms are defined by rule 1001 of the Federal Rules of Evidence (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, court order, or issue other compulsory legal process.

(5) PROPERLY CLASSIFIED INFORMATION.—The term “properly classified information” means information or documents that have been classified in accordance with Executive Orders, statutes, applicable procedures, and regulations regarding classification of information or documents.

(6) PROTECTED INFORMATION.—The term “protected information” means—

(A) information identifying a source who provided information under a promise or agreement of confidentiality made by a covered person; or

(B) any records, contents of a communication, documents, or information that a covered person obtained or created upon a promise or agreement that such records, contents of a communication, documents, or information would be confidential.

Amend the title so as to read: “A bill to maintain the free flow of information to the public by prescribing conditions under which Federal entities may compel disclosure of confidential information from journalists.”.

Mr. SPECTER. I thank the Chair and yield the floor.

ADJOURNMENT UNTIL 10 A.M.
TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 10 a.m. tomorrow.

Thereupon, the Senate, at 7:08 p.m., adjourned until Wednesday, July 30, 2008, at 10 a.m.