

RULEMAKING AUTHORITY OF JUDICIAL CONFERENCE RELATING TO E-GOVERNMENT ACT OF 2002

JULY 25, 2003.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 1303]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1303) to amend the E-Government Act of 2002 with respect to rulemaking authority of the Judicial Conference, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. RULEMAKING AUTHORITY OF JUDICIAL CONFERENCE.

Section 205(c) of the E-Government Act of 2002 (Public Law 107-347) is amended by striking paragraph (3) and inserting the following:

“(3) PRIVACY AND SECURITY CONCERNS.—

“(A)(i) The Supreme Court shall prescribe rules, in accordance with sections 2072 and 2075 of title 28, United States Code, to protect privacy and security concerns relating to electronic filing of documents and the public availability under this subsection of documents filed electronically or converted to electronic form.

“(ii) Such rules shall provide to the extent practicable for uniform treatment of privacy and security issues throughout the Federal courts.

“(iii) Such rules shall take into consideration best practices in Federal and State courts to protect private information or otherwise maintain necessary information security.

“(iv) Except as provided in clause (v), to the extent that such rules provide for the redaction of certain categories of information in order to protect privacy and security concerns, such rules shall provide that a party that wishes to file an otherwise proper document containing such protected information may file an unredacted document under seal, which shall be retained by the court as part of the record, and which, at the discretion of the court and subject to any applicable rules issued in accordance with chapter 131 of title 28, United States Code, shall be either in lieu of, or in addition to, a redacted copy in the public file.

“(v) Such rules may require the use of appropriate redacted identifiers in lieu of protected information described in clause (iv) in any pleading, motion, or other paper filed with the court (except with respect to a paper that is an exhibit or other evidentiary matter, or with respect to a reference list described in this subclause), or in any written discovery response—

“(I) by authorizing the filing under seal, and permitting the amendment as of right under seal, of a reference list that—

“(aa) identifies each item of unredacted protected information that the attorney or, if there is no attorney, the party, certifies is relevant to the case; and

“(bb) specifies an appropriate redacted identifier that uniquely corresponds to each item of unredacted protected information listed; and

“(II) by providing that all references in the case to the redacted identifiers in such reference list shall be construed, without more, to refer to the corresponding unredacted item of protected information.

“(B)(i) Subject to clause (ii), the Judicial Conference of the United States may issue interim rules, and interpretive statements relating to the application of such rules, which conform to the requirements of this paragraph and which shall cease to have effect upon the effective date of the rules required under subparagraph (A).

“(ii) Pending issuance of the rules required under subparagraph (A), any rule or order of any court, or of the Judicial Conference, providing for the redaction of certain categories of information in order to protect privacy and security concerns arising from electronic filing or electronic conversion shall comply with, and be construed in conformity with, subparagraph (A)(iv).

“(C) Not later than 1 year after the rules prescribed under subparagraph (A) take effect, and every 2 years thereafter, the Judicial Conference shall submit to Congress a report on the adequacy of those rules to protect privacy and security.”.

PURPOSE AND SUMMARY

The purpose of H.R. 1303 is to require the Judicial Conference of the United States to promulgate national rules to address privacy and security concerns relating to the electronic filing of documents and the public availability of documents filed electronically. In addition, to the extent any such rules provide for the redaction of certain information in order to protect privacy, H.R. 1303 requires that the rules allow litigants to file and access unredacted documents under seal for evidentiary purposes in addition to a redacted version for public use. H.R. 1303 amends subsection 205(c)(3) of the E-Government Act of 2002.¹

¹ Pub. L. No. 107–347.

BACKGROUND AND NEED FOR THE LEGISLATION

The E-Government Act improves the “information management” of the Federal Government by authorizing upgrades to improve systems management, information technology, and security. It also includes provisions that promote greater citizen access to Federal Government information.

Section 205 of the Act would require each Federal court to establish a website that features pertinent information, such as courthouse locations, relevant telephone numbers, court rules, docket listings, written opinions, and filings.

Subsection (c)(3), entitled “Privacy and Security Concerns,” mandates the development of national rules to address privacy and security concerns relating to the electronic filing of documents and the public availability of those documents. This subsection provides that in the event any such rule requires redaction of personal data identifiers (e.g., Social Security numbers, bank and credit card account numbers) from electronically filed documents, the rule must allow a party to file an unredacted copy of the document under seal that shall be kept in the court file. Recognizing the court’s interest in making redacted versions of such information available to the public, the subsection further allows a court to require a redacted copy of the document to be filed as well, a procedure that would result in two versions of each such document being included in the court file.

The Department of Justice (DoJ) endorsed subsection (c)(3) of the E-Government Act as it exists in current law as a response to the privacy policy of the Judicial Conference. That policy contemplates that litigants will file documents containing redacted versions of personal data identifiers so as to minimize the risk of identity theft and other untoward consequences that could flow from the filing of unredacted identifiers. DoJ was concerned that this privacy policy could impede the legal introduction into evidence of information it deemed necessary to prove the elements of certain cases, such as bank account numbers in a bank fraud prosecution.

Because it contemplated inclusion of two versions (redacted and unredacted) of each such document in a court file, however, subsection (c)(3) as it was enacted generated concern within the Federal judiciary. The Judicial Conference believes that the current subsection (c)(3) creates the potential for confusion and error in several contexts, including making appropriate versions of the documents available to juries and the public and certifying appropriate versions of the documents for purposes of appeal.

H.R. 1303, as amended, represents a consensus reached after negotiations among the Committee, the Department of Justice, and the Judicial Conference. It ensures that the DoJ will have the ability to access all necessary information to prosecute crimes through the uniform application of privacy rules. The Judicial Conference retains the authority to enact rules that comply with case law, provide the greatest public access to information possible, and protect the privacy of all participants in the Federal judicial system.

HEARINGS

No hearings were held on H.R. 1303.

COMMITTEE CONSIDERATION

On March, 20, 2003, the Subcommittee on Courts, the Internet, and Intellectual Property met in open session and ordered favorably reported the bill H.R. 1303, with an amendment, by a voice vote, a quorum being present. On July, 16, 2003, the Committee met in open session and ordered favorably reported the bill H.R. 1303 with an amendment by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of Rule XIII of the Rules of the House of Representatives, the Committee notes that there were no recorded votes during the committee consideration of H.R. 1303.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of Rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of Rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1303, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 22, 2003.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1303, a bill to amend the E-Government Act of 2002 with respect to rulemaking authority of the Judicial Conference.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford, who can be reached at 226-2860.

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 1303—A bill to amend the E-Government Act of 2002 with respect to rulemaking authority of the Judicial Conference.

H.R. 1303 would amend the E-Government Act of 2003 to allow the identification of redacted material to protect sensitive information contained in documents filed electronically, or converted to electronic form, with the Federal court system. (A redacted document is a record that has been edited to prevent public disclosure of information.) Under H.R. 1303, documents filed with the Federal courts could be filed in either of two ways—filing an unredacted (i.e., unedited) version under seal with a redacted version for public use, or filing a redacted version for public use and a reference list under seal that identifies redacted information for the court.

CBO estimates that implementing this bill would have no significant effect on Federal spending based on information from the Judicial Conference of the United States. These procedures are not expected to have a significant impact on court costs. Enacting H.R. 1303 would not affect direct spending or revenues. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of State, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford, who can be reached at 226–2860. The estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

H.R. 1303 does not authorize funding. Therefore, clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives is inapplicable.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, and article III, section 1 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Rulemaking Authority of Judicial Conference:

This section of the bill as reported amends subsection 205(c)(3) of the E-Government Act by requiring the promulgation of national rules to protect privacy and security concerns related to the filing and public availability of electronic documents. Such rules permit the filing of a “reference list” with the court that would include the complete version of each personal data identifier and a corresponding partially redacted version of each identifier. This redacted version would be used in lieu of, and be construed to refer to, the complete version in subsequent filings in the case. The list is intended to serve as a type of “key.” For example, if an individual’s full Social Security Number is 123–45–6789, the list would include the complete number with the corresponding partially redacted number of XXX–XX–6789, which would be used in future filings. This listing would be maintained under seal and could be amended by a party as a matter of right.

This is beneficial to the court and the clerk's office because it eliminates the filing of two versions of a document—one unredacted (and automatically under seal) and one redacted. It allows the implementation of the Judicial Conference privacy policy by providing public access to redacted electronic case files. This satisfies DoJ's needs as well by permitting filing of unredacted identifiers in those circumstances it deems necessary to establish the elements of a criminal case.

The legislation also amends (c)(3) by allowing a party to file an unredacted exhibit or other evidentiary matter under seal, with the option that the court could require a redacted copy of this document for the public file. This procedure is important for those documents, like exhibits, that are not created by the party, so as to preserve the authenticity and integrity of that document for evidentiary purposes. The Judicial Conference, and individual courts overseeing particular proceedings, are encouraged to take steps to minimize the burden to litigants associated with redaction of documents and otherwise administering this process.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 205 OF THE E-GOVERNMENT ACT OF 2002

SEC. 205. FEDERAL COURTS.

(a) * * *

* * * * *

(c) ELECTRONIC FILINGS.—

(1) * * *

* * * * *

[(3) PRIVACY AND SECURITY CONCERNS.—(A)(i) The Supreme Court shall prescribe rules, in accordance with sections 2072 and 2075 of title 28, United States Code, to protect privacy and security concerns relating to electronic filing of documents and the public availability under this subsection of documents filed electronically.

[(ii) Such rules shall provide to the extent practicable for uniform treatment of privacy and security issues throughout the Federal courts.

[(iii) Such rules shall take into consideration best practices in Federal and State courts to protect private information or otherwise maintain necessary information security.

[(iv) To the extent that such rules provide for the redaction of certain categories of information in order to protect privacy and security concerns, such rules shall provide that a party that wishes to file an otherwise proper document containing such information may file an unredacted document under seal, which shall be retained by the court as part of the

record, and which, at the discretion of the court and subject to any applicable rules issued in accordance with chapter 131 of title 28, United States Code, shall be either in lieu of, or in addition, to, a redacted copy in the public file.

[(B)(i) Subject to clause (ii), the Judicial Conference of the United States may issue interim rules, and interpretive statements relating to the application of such rules, which conform to the requirements of this paragraph and which shall cease to have effect upon the effective date of the rules required under subparagraph (A).

[(ii) Pending issuance of the rules required under subparagraph (A), any rule or order of any court, or of the Judicial Conference, providing for the redaction of certain categories of information in order to protect privacy and security concerns arising from electronic filing shall comply with, and be construed in conformity with, subparagraph (A)(iv).

[(C) Not later than 1 year after the rules prescribed under subparagraph (A) take effect, and every 2 years thereafter, the Judicial Conference shall submit to Congress a report on the adequacy of those rules to protect privacy and security.]

(3) *PRIVACY AND SECURITY CONCERNS.*—

(A)(i) *The Supreme Court shall prescribe rules, in accordance with sections 2072 and 2075 of title 28, United States Code, to protect privacy and security concerns relating to electronic filing of documents and the public availability under this subsection of documents filed electronically or converted to electronic form.*

(ii) *Such rules shall provide to the extent practicable for uniform treatment of privacy and security issues throughout the Federal courts.*

(iii) *Such rules shall take into consideration best practices in Federal and State courts to protect private information or otherwise maintain necessary information security.*

(iv) *Except as provided in clause (v), to the extent that such rules provide for the redaction of certain categories of information in order to protect privacy and security concerns, such rules shall provide that a party that wishes to file an otherwise proper document containing such protected information may file an unredacted document under seal, which shall be retained by the court as part of the record, and which, at the discretion of the court and subject to any applicable rules issued in accordance with chapter 131 of title 28, United States Code, shall be either in lieu of, or in addition to, a redacted copy in the public file.*

(v) *Such rules may require the use of appropriate redacted identifiers in lieu of protected information described in clause (iv) in any pleading, motion, or other paper filed with the court (except with respect to a paper that is an exhibit or other evidentiary matter, or with respect to a reference list described in this subclause), or in any written discovery response—*

(I) by authorizing the filing under seal, and permitting the amendment as of right under seal, of a reference list that—

(aa) identifies each item of unredacted protected information that the attorney or, if there is no attorney, the party, certifies is relevant to the case; and

(bb) specifies an appropriate redacted identifier that uniquely corresponds to each item of unredacted protected information listed; and

(II) by providing that all references in the case to the redacted identifiers in such reference list shall be construed, without more, to refer to the corresponding unredacted item of protected information.

(B)(i) Subject to clause (ii), the Judicial Conference of the United States may issue interim rules, and interpretive statements relating to the application of such rules, which conform to the requirements of this paragraph and which shall cease to have effect upon the effective date of the rules required under subparagraph (A).

(ii) Pending issuance of the rules required under subparagraph (A), any rule or order of any court, or of the Judicial Conference, providing for the redaction of certain categories of information in order to protect privacy and security concerns arising from electronic filing or electronic conversion shall comply with, and be construed in conformity with, subparagraph (A)(iv).

(C) Not later than 1 year after the rules prescribed under subparagraph (A) take effect, and every 2 years thereafter, the Judicial Conference shall submit to Congress a report on the adequacy of those rules to protect privacy and security.

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, JULY 16, 2003

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:04 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr., [Chairman of the Committee] presiding.

[Intervening business.]

Chairman SENSENBRENNER. The next item on the agenda will be H.R. 1303, to amend the E-Government Act of 2002 with respect to the rule-making authority of the Judicial Conference.

The chair recognizes the gentleman from Texas, Mr. Smith, the Chairman of the Subcommittee on Courts, the Internet, and Intellectual Property.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. Chairman, the Subcommittee on Courts, the Internet and Intellectual Property reports favorably the bill H.R. 1303, with a single amendment in the nature of a substitute and moves its favorable recommendation to the full House.

Chairman SENSENBRENNER. Without objection, the bill will be considered as read and open for amendment at any point.

[The bill, H.R. 1303, follows:]

108TH CONGRESS
1ST SESSION

H. R. 1303

To amend the E-Government Act of 2002 with respect to rulemaking authority of the Judicial Conference.

IN THE HOUSE OF REPRESENTATIVES

MARCH 18, 2003

Mr. SMITH of Texas (for himself and Mr. TOM DAVIS of Virginia) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the E-Government Act of 2002 with respect to rulemaking authority of the Judicial Conference.

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. RULEMAKING AUTHORITY OF JUDICIAL CON-**
4 **FERENCE.**

5 Section 205(c) of the E-Government Act of 2002
6 (Public Law 107–347) is amended by striking paragraph
7 (3) and inserting the following:

8 “(3) PRIVACY AND SECURITY CONCERNS.—The
9 Judicial Conference of the United States may pro-
10 mulgate rules to protect privacy and security con-

1 cerns relating to the electronic filing of documents,
2 and the public availability of documents filed elec-
3 tronically, pursuant to this subsection.”.

○

Chairman SENSENBRENNER. And the Subcommittee amendment in the nature of a substitute, which the Members have before them, will be considered as read, considered as the original text for purposes of amendment and open for amendment at any point.
[The Subcommittee amendment follows:]

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1303
(TEXT AS REPORTED BY THE SUBCOMMITTEE ON
COURTS, THE INTERNET, AND INTELLECTUAL
PROPERTY)**

Strike all after the enacting clause and insert the following:

1 **SECTION 1. RULEMAKING AUTHORITY OF JUDICIAL CON-**
2 **FERENCE.**

3 Section 205(c) of the E-Government Act of 2002
4 (Public Law 107–347) is amended by striking paragraph
5 (3) and inserting the following:

6 “(3) PRIVACY AND SECURITY CONCERNS.—The
7 Judicial Conference of the United States shall pro-
8 mulgate rules to protect privacy and security con-
9 cerns relating to the electronic filing of documents,
10 and the public availability of documents filed elec-
11 tronically, pursuant to this subsection.”.

Chairman SENSENBRENNER. The chair recognizes the gentleman from Texas, Mr. Smith, to strike the last word.

Mr. SMITH. Thank you, Mr. Chairman.

The E-Government Act improves the information management of the Federal Government by authorizing upgrades to enhance systems management, information technology and security. It also includes provisions that ensure greater citizen access to Federal Government information.

Section 205(c)(3) now requires the Judicial Conference to prescribe rules pursuant to the Rules Enabling Act and extensive criteria to protect privacy and security concerns relating to electronic filing of documents and the public availability of documents filed electronically.

This is problematic because under the criteria, parties, rather than courts, can determine whether and what information will be sealed. It increases the likelihood that parties will make mistakes or manipulate litigation.

Section 205 of the E-Government Act was meant to increase public access to information, but its present wording may serve to restrict that access. H.R. 1303 remedies this situation by instructing the Judicial Conference to issue rules to protect privacy and security concerns relating to the electronic filing of documents and the public availability of documents filed electronically.

After the Subcommittee on Courts, the Internet and Intellectual Property marked up H.R. 1303, the Department of Justice raised concerns that under H.R. 1303 the Judicial Conference could adopt rules that might prevent the Department from using certain information necessary to prosecute cases such as credit card fraud. As a result, I will offer an amendment that will address those concerns.

Mr. Chairman, H.R. 1303 is a good bill, and I urge my colleagues to support the amendment and the bill, and before I yield back the balance of my time, while the Ranking Member of the Subcommittee, Mr. Berman, is not here, it is my understanding that we could confirm with his staff that he does support this bill and the subsequent amendment.

Yield back, Mr. Chairman.

Chairman SENSENBRENNER. Is there any opening statement on the Democratic side?

[No response.]

Chairman SENSENBRENNER. If not, without objection, all opening statements will appear in the record at this point.

[The prepared statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman and Ranking Member, thank you for holding the Markup today of H.R. 1303 which will amend Section 205 of the existing and codified "E-Government Act." The operative language of the bill with the Amendment offered by Representative Howard L. Berman and adopted by this Subcommittee will restore order to the electronic infrastructure that serves the federal court system.

The primary goals of the "E-Government Act," namely to (1) improve the "information management" of the Federal Government by authorizing upgrades to improve systems management, information technology, and security, and (2) to insure greater citizen access to Federal Government information ostensibly serves the interest of the public by way of making the government's electronic infrastructure more "user friendly" and useful overall. However, in light of the import of the exist-

ing codified language of the relevant provision, Section 205 of the E-Government Act,” namely the hortatory “shall” reveals a problem that is addressed by H.R. 1303:

“[t]he Judicial Conference of the United States shall prescribe rules . . . to protect privacy and security concerns relating to electronic filing of documents and the public availability under this subsection of documents filed electronically.”

While the overt intent of the hortatory language suggests a legislative benefit to the public and to the electronic infrastructure, by implication, the provision waters down the discretion of the Federal Courts to determine the sealability of court documents as well as restrict public access to certain case information.

In the wake of 9/11 and the mounting death toll that is ever-escalating even in the aftermath of war, it is vital that we keep our secure information secure and less vulnerable to negligent or abusive acts, as the net effect could lead to larger problems. Allowing carte blanche access to certain court electronic court documents allowing the manipulation of the sealability of those documents is a disaster waiting to happen. The type of crimes to be controlled by the bill introduced in the Subcommittee on Crime, Terrorism, and Homeland Security, namely H.R. 1678, the “Anti-Hoax Terrorism Act of 2003” could create an administrative nightmare for the federal court system. The cost, time, and energy expenditure that could come about absent the protections of H.R. 1303 would only make our government even more vulnerable to real terrorist attacks. As a Member of the Select Committee on Homeland Security, I am particularly interested in preventing terrorism hoaxes and holding criminal transgressors accountable. Allowing parties access to freely manipulate certain electronic litigation documents will lead to severe administrative backlog and the concomitant vulnerability of other areas of our critical infrastructure. Problems never stop where they begin. Homeland security funds and resources are both scarce and precious. During my work on the Select Committee on Homeland Security, I have spoken with numerous fire departments, police departments, hazardous materials teams, and other first responders across the country who are not receiving the funding, equipment, and other resources they need to adequately protect their communities.

Mr. Chairman and Ranking Member, for the reasons set forth above, I support H.R. 1303, the “E-Government Act of 2003” and thank you for the opportunity to submit my input.

Chairman SENSENBRENNER. Are there amendments?

Mr. SMITH. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 1303 offered by Mr. Smith of Texas. Page 1, strike line 8 and all that follows through Page 2, line 3 and insert the following:

(3) Privacy—

Mr. SMITH. Mr. Chairman—

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendment of Mr. Smith follows:]

AMENDMENT TO H.R. 1303
OFFERED BY MR. SMITH OF TEXAS

Page 1, strike line 8 and all that follows through
page 2, line 3 and insert the following:

- 1 “(3) PRIVACY AND SECURITY CONCERNS.—
- 2 “(A)(i) The Supreme Court shall prescribe
- 3 rules, in accordance with sections 2072 and
- 4 2075 of title 28, United States Code, to protect
- 5 privacy and security concerns relating to elec-
- 6 tronic filing of documents and the public avail-
- 7 ability under this subsection of documents filed
- 8 electronically or converted to electronic form.
- 9 “(ii) Such rules shall provide to the extent
- 10 practicable for uniform treatment of privacy
- 11 and security issues throughout the Federal
- 12 courts.
- 13 “(iii) Such rules shall take into consider-
- 14 ation best practices in Federal and State courts
- 15 to protect private information or otherwise
- 16 maintain necessary information security.
- 17 “(iv) Except as provided in clause (v), to
- 18 the extent that such rules provide for the redac-
- 19 tion of certain categories of information in
- 20 order to protect privacy and security concerns,

1 such rules shall provide that a party that wish-
2 es to file an otherwise proper document con-
3 taining such protected information may file an
4 unredacted document under seal, which shall be
5 retained by the court as part of the record, and
6 which, at the discretion of the court and subject
7 to any applicable rules issued in accordance
8 with chapter 131 of title 28, United States
9 Code, shall be either in lieu of, or in addition
10 to, a redacted copy in the public file.

11 “(v) Such rules may require the use of ap-
12 propriate redacted identifiers in lieu of pro-
13 tected information described in clause (iv) in
14 any pleading, motion, or other paper filed with
15 the court (except with respect to a paper that
16 is an exhibit or other evidentiary matter, or
17 with respect to a reference list described in this
18 subclause), or in any written discovery
19 response—

20 “(I) by authorizing the filing under
21 seal, and permitting the amendment as of
22 right under seal, of a reference list that—

23 “(aa) identifies each item of
24 unredacted protected information that
25 the attorney or, if there is no attor-

1 ney, the party, certifies is relevant to
2 the case; and

3 “(bb) specifies an appropriate re-
4 dacted identifier that uniquely cor-
5 responds to each item of unredacted
6 protected information listed; and

7 “(II) by providing that all references
8 in the case to the redacted identifiers in
9 such reference list shall be construed, with-
10 out more, to refer to the corresponding
11 unredacted item of protected information.

12 “(B)(i) Subject to clause (ii), the Judicial
13 Conference of the United States may issue in-
14 terim rules, and interpretive statements relating
15 to the application of such rules, which conform
16 to the requirements of this paragraph and
17 which shall cease to have effect upon the effec-
18 tive date of the rules required under subpara-
19 graph (A).

20 “(ii) Pending issuance of the rules required
21 under subparagraph (A), any rule or order of
22 any court, or of the Judicial Conference, pro-
23 viding for the redaction of certain categories of
24 information in order to protect privacy and se-
25 curity concerns arising from electronic filing or

1 electronic conversion shall comply with, and be
2 construed in conformity with, subparagraph
3 (A)(iv).

4 “(C) Not later than 1 year after the rules
5 prescribed under subparagraph (A) take effect,
6 and every 2 years thereafter, the Judicial Con-
7 ference shall submit to Congress a report on
8 the adequacy of those rules to protect privacy
9 and security.”.

Chairman SENSENBRENNER. The gentleman from Texas is recognized for 5 minutes.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. Chairman, H.R. 1303 amends section 205(c)(3) of the E-Government Act. This section instructs the Judicial Conference to enact national rules to protect privacy and security concerns relating to the electronic filing of documents and the public availability of those documents.

The Federal judiciary maintains that the current text of Subsection (c)(3) may invite confusion, manipulation or other error, since the provision contemplates two versions, both redacted and unredacted, of each document in a court file.

At my request, the Department of Justice and the Administrative Office of the U.S. Courts entered into discussions to develop a privacy provision that would be acceptable to both parties. The amendment that is being offered reflects that agreement between the Judiciary and the Department.

The amendment provides the Department of Justice consistency of rules in all jurisdictions and the ability to access the information necessary to prosecute crimes. The Judicial Conference will retain the authority to enact rules that comply with case law, provide the greatest public access to information possible, and protect the privacy of all participants in the Federal judicial system.

I urge my colleagues to support this amendment, and I would be happy to yield to Mr. Berman, the Ranking Member of the Subcommittee, for his comments on the amendment.

Mr. BERMAN. Well, I thank the Chairman for yielding, and I rise in support of the amendment offered by Mr. Smith. The Judiciary Committee did not have an opportunity to deal with section 205(c)(3) of the E-Government Act of 2002. In effect, our Committee was circumvented. But that section, whatever one thinks of the process, was not all bad. Certain parts of the section were problematic, but I support its requirement that the U.S. courts protect the privacy and the security of electronic court documents.

Because I supported the thrust of section 205(c)(3), even though I didn't like the process that produced it, I offered an amendment to H.R. 1303 during the Subcommittee markup. This amendment, adopted by voice vote, ensured that the U.S. courts would still have a congressional mandate to protect the privacy and security of electronic court documents.

The amendment now offered by Subcommittee Chairman Smith is entirely consistent with the privacy and security concerns that motivated my original amendment. In fact, I want to give them credit for going several steps beyond my amendment in protecting the privacy and security of electronic court documents.

The amendment before us today, which represents a negotiated agreement between the Department of Justice and the Administrative Office of the Courts, substantially returns to the language of section 205(c)(3). While it does make some important changes to address concerns of the U.S. courts, this amendment will provide more protection to privacy and security than either the original H.R. 1303 or the version containing my amendment.

I support this amendment and ask my colleagues to do the same, and I thank the Chairman and yield.

Mr. SMITH. Mr. Chairman, I would like to thank Mr. Berman for his comments, and I'll yield back the balance of my time.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from Texas, Mr. Smith, to the amendment in the nature of a substitute.

Those in favor will say aye.

Opposed, no.

The ayes appear to have it, the ayes have it, and the amendment to the amendment in the nature of a substitute is agreed to.

Are there further amendments?

[No response.]

Chairman SENSENBRENNER. If not, the question is on agreeing to the amendment in the nature of a substitute of the Subcommittee.

Those in favor will say aye.

Opposed, no.

The ayes appear to have it, the ayes have it, and the amendment in the nature of a substitute is agreed to.

A reporting quorum is present. The question is on the motion to report the bill H.R. 1303 favorably as amended.

Ms. JACKSON LEE. Which one is that? Excuse me, Mr. Chairman. Which one is that?

Chairman SENSENBRENNER. That's the E-Government bill.

Those in favor will say aye.

Opposed, no.

The ayes appear to have it, the ayes have it, and the motion to report favorably is agreed to.

Without objection, the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute, incorporating the amendments adopted here today. Without objection, the Chairman is authorized to move it to go to conference pursuant to House Rules. Without objection, the staff is directed to make any technical and conforming changes and all Members will be given 2 days as provided by the rules in which to submit additional dissenting supplemental or minority views.