

PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 2102) TO MAINTAIN THE FREE FLOW OF INFORMATION TO THE PUBLIC BY PROVIDING CONDITIONS FOR THE FEDERALLY COMPELLED DISCLOSURE OF INFORMATION BY CERTAIN PERSONS CONNECTED WITH THE NEWS MEDIA

OCTOBER 15, 2007.—Referred to the House Calendar and ordered to be printed

Mrs. SLAUGHTER, from the Committee on Rules,
submitted the following

R E P O R T

[To accompany H. Res. 742]

The Committee on Rules, having had under consideration House Resolution 742, by a non-record vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 2102, the “Free Flow of Information Act of 2007,” under a structured rule. The resolution provides for one hour of debate equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary.

The resolution waives all points of order against consideration of the bill except those arising under clause 9 or 10 of rule XXI. The resolution provides that the amendment in the nature of a substitute recommended by the Committee on the Judiciary shall be considered as adopted. The bill, as amended, shall be considered as read. The resolution waives all points of order against provisions of the bill. This waiver does not affect the point of order available under clause 9 of rule XXI (regarding earmark disclosure).

The resolution makes in order only the amendment printed in this report if offered by Representative Boucher or his designee. The amendment shall not be subject to a demand for division of the question, shall be considered as read, and shall be debatable for ten minutes equally divided and controlled by the proponent and an opponent. The resolution waives all points of order against the amendment printed in this report except those arising under clause 9 or 10 of rule XXI. The resolution provides one motion to recommit with or without instructions. Finally, the resolution permits the Chair, during consideration of the bill in the House, to postpone

further consideration of the bill to a time designated by the Speaker.

EXPLANATION OF WAIVERS

Although the rule waives all points of order against the bill and its consideration (except for those arising under clause 9 or 10 of rule XXI), the Committee is not aware of any points of order against the bill or its consideration. The waivers of all points of order against the bill and its consideration (except those arising under clause 9 or 10 of rule XXI) are prophylactic in nature.

COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee record vote No. 348

Date: October 15, 2007.

Measure: H.R. 2102.

Motion by: Mr. Dreier.

Summary of motion: To grant an open rule.

Results: Defeated 3–7.

Vote by Members: Hastings (FL)—Nay; Matsui—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Sutton—Nay; Dreier—Yea; Diaz-Balart—Yea; Hastings (WA)—Yea; Slaughter—Nay.

Rules Committee record vote No. 349

Date: October 15, 2007.

Measure: H.R. 2102.

Motion by: Mr. Diaz-Balart.

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Smith (TX), #2, which would require that a party seeking to compel disclosure exhaust reasonable alternative sources “known to that party.” It would delete a requirement that, in a criminal investigation, information that a crime has occurred be from a person other than a covered person. It would allow the government to prove that information sought is “important” (not critical) to the resolution of a criminal or civil proceeding. It would require that the government demonstrate that the disclosure of a source “will help” (instead of is necessary to) prevent or identify the origin of an act of terrorism. It would require the government to demonstrate that the disclosure of a source “will help” identify a person who has disclosed certain information. It would delete the public interest balancing test. It would delete the provision permitting access to source information to prevent imminent death and replace it with a provision regarding prevention of criminal misconduct.

Results: Defeated 3–7.

Vote by Members: Hastings (FL)—Nay; Matsui—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Sutton—Nay; Dreier—Yea; Diaz-Balart—Yea; Hastings (WA)—Yea; Slaughter—Nay.

SUMMARY OF AMENDMENT MADE IN ORDER

(Summaries derived from information provided by sponsors.)

1. Boucher (VA)/Pence (IN): The amendment provides the shield can be pierced to prevent or identify the perpetrator of a terrorist attack or harm to national security. It also provides that the disclosure of a leaker's identity can be compelled in cases involving leaks of properly classified information. It also permits law enforcement to obtain an order compelling disclosure of documents and information obtained as the result of eyewitness observations of alleged criminal or tortious conduct. It also limits the Act's coverage to a person who "regularly" engages in the listed journalistic activities. Finally, it adds three new exceptions to the definition of "covered person:" Specially Designated Global Terrorist, as designated by the Treasury Department; a specially designated terrorist, as defined by federal regulations; and a terrorist organization, as defined by immigration law. (10 minutes)

TEXT OF AMENDMENT TO BE MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BOUCHER OF VIRGINIA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 3, line 24, strike "to prevent" and insert "to prevent, or to identify any perpetrator of,".

Page 4, line 6, strike "or".

Page 4, line 22, strike "and" and insert "or".

Page 4, after line 22, insert the following:

(D)(i) disclosure of the identity of such a source is essential to identify in a criminal investigation or prosecution a person who without authorization disclosed properly classified information and who at the time of such disclosure had authorized access to such information; and

(ii) such unauthorized disclosure has caused or will cause significant and articulable harm to the national security; and

Page 5, after line 19, insert the following:

(d) EXCEPTION RELATING TO CRIMINAL OR TORTIOUS CONDUCT.—The provisions of this section shall not prohibit or otherwise limit a Federal entity in any matter arising under Federal law from compelling a covered person to disclose any information, record, document, or item obtained as the result of the eyewitness observation by the covered person of alleged criminal conduct or as the result of the commission of alleged criminal or tortious conduct by the covered person, including any physical evidence or visual or audio recording of the conduct, if a Federal court determines that the party seeking to compel such disclosure has exhausted all other reasonable efforts to obtain the information, record, document, or item, respectively, from alternative sources. The previous sentence shall not apply, and subsections (a) and (b) shall apply, in the case that the alleged criminal conduct observed by the covered person or the alleged criminal or tortious conduct committed by the covered person is the act of transmitting or communicating the information, record, document, or item sought for disclosure.

Page 7, strike lines 14 through 18 and insert the following:

(2) COVERED PERSON.—The term "covered person" means a person who regularly gathers, prepares, collects, photographs, records, writes, edits, reports, or publishes news or information that concerns local, national, or international events or other

matters of public interest for dissemination to the public for a substantial portion of the person's livelihood or for substantial financial gain and includes a supervisor, employer, parent, subsidiary, or affiliate of such covered person. Such term shall not include—

Page 7, line 22, strike “or”.

Page 7, line 26, strike the period and insert a semi-colon.

Page 7, after line 26, insert the following:

(C) any person included on the Annex to Executive Order 13224, of September 23, 2001, and any other person identified under section 1 of that Executive order whose property and interests in property are blocked by that section;

(D) any person 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

(E) any 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)).