

AMENDMENT NO. _____ Calendar No. _____

Purpose: To replace the term and definition of “covered person” with “covered journalist”.

IN THE SENATE OF THE UNITED STATES—113th Cong., 1st Sess.

S. 987

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.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by _____

Viz:

1 On page 1, beginning on line 6, strike “**PERSONS**”
2 and insert “**JOURNALISTS**”

3 On page 1, line 11, strike “person” and insert “jour-
4 nalist”.

5 On page 2, line 6, strike “person” and insert “jour-
6 nalist”.

1 On page 2, line 10, strike “person” and insert “jour-
2 nalist”.

3 On page 2, line 18, strike “person” and insert “jour-
4 nalist”.

5 On page 2, line 22, strike “person” and insert “jour-
6 nalist”.

7 On page 3, line 12, strike “person” and insert “jour-
8 nalist”.

9 On page 4, line 2, strike “person” and insert “jour-
10 nalist”.

11 On page 4, line 21, strike “PERSONS” and insert
12 “JOURNALISTS”.

13 On page 5, beginning on line 11, strike “person” and
14 insert “journalist”.

15 On page 8, line 25, strike “person” and insert “jour-
16 nalist”.

1 On page 9, line 4, strike “person” and insert “jour-
2 nalist”.

3 On page 9, line 8, strike “person” and insert “jour-
4 nalist”.

5 On page 9, line 14, strike “person” and insert “jour-
6 nalist”.

7 On page 9, line 18, strike “PERSONS” and insert
8 “JOURNALISTS”.

9 On page 9, line 20, strike “person” and insert “jour-
10 nalist”.

11 On page 10, line 22, strike “person” and insert
12 “journalist”.

13 On page 11, line 15, strike “person” and insert
14 “journalist”.

15 On page 11, line 21, strike “person” and insert
16 “journalist”.

1 (aa) is, or on the relevant date,
2 was, an employee, independent con-
3 tractor, or agent of an entity or serv-
4 ice that disseminates news or informa-
5 tion by means of newspaper; nonfie-
6 tion book; wire service; news agency;
7 news website, mobile application or
8 other news or information service
9 (whether distributed digitally or other-
10 wise); news program; magazine or
11 other periodical, whether in print,
12 electronic, or other format; or through
13 television or radio broadcast, multi-
14 channel video programming dis-
15 tributor (as such term is defined in
16 section 602(13) of the Communica-
17 tions Act of 1934 (47 U.S.C.
18 522(13)), or motion picture for public
19 showing;

20 (bb) with the primary intent to
21 investigate events and procure mate-
22 rial in order to disseminate to the
23 public news or information concerning
24 local, national, or international events
25 or other matters of public interest, en-

1 gages, or as of the relevant date en-
2 gaged, in the regular gathering, prep-
3 aration, collection, photographing, re-
4 cording, writing, editing, reporting or
5 publishing on such matters by—

6 (AA) conducting interviews;

7 (BB) making direct observa-
8 tion of events; or

9 (CC) collecting, reviewing,
10 or analyzing original writings,
11 statements, communications, re-
12 ports, memoranda, records, tran-
13 scriptions, documents, photographs,
14 recordings, tapes, materials,
15 data, or other information wheth-
16 er in paper, electronic, or other
17 form;

18 (cc) had such intent at the incep-
19 tion of the process of gathering the
20 news or information sought; and

21 (dd) obtained the news or infor-
22 mation sought in order to disseminate
23 the news or information to the public;
24 or

25 (II) means a person who—

1 (aa) at the inception of the proc-
2 ess of gathering the news or informa-
3 tion sought, had the primary intent to
4 investigate issues or events and pro-
5 cure material in order to disseminate
6 to the public news or information con-
7 cerning local, national, or inter-
8 national events or other matters of
9 public interest, and regularly con-
10 ducted interviews, reviewed docu-
11 ments, captured images of events, or
12 directly observed events;

13 (bb) obtained the news or infor-
14 mation sought in order to disseminate
15 it by means of a medium set out in
16 subclause (I)(aa) of this section; and

17 (cc) either—

18 (AA) would have been in-
19 cluded in the definition in sub-
20 clause (I)(aa) of this section for
21 any continuous one-year period
22 within the 20 years prior to the
23 relevant date or any continuous
24 three-month period within the 5
25 years prior to the relevant date;

1 (BB) had substantially con-
2 tributed, as an author, editor,
3 photographer, or producer, to a
4 significant number of articles,
5 stories, programs, or publications
6 by a medium set out in subclause
7 (I)(aa) of this section within 5
8 years prior to the relevant date;
9 or

10 (CC) was a student partici-
11 pating in a journalistic medium
12 at an institution of higher edu-
13 cation (as defined in section 102
14 of the Higher Education Act of
15 1965 (20 U.S.C. 1002)) on the
16 relevant date;

17 (ii) includes a supervisor, editor, em-
18 ployer, parent company, subsidiary, or af-
19 filiate of a person described in subclause
20 (I) or (II) of clause (i); and

21 (iii) does not include any person or
22 entity—

23 (I) whose principal function, as
24 demonstrated by the totality of such
25 person or entity's work, is to publish

1 primary source documents that have
2 been disclosed to such person or entity
3 without authorization; or

4 (II) who is or is reasonably likely
5 to be—

6 (aa) a foreign power or an
7 agent of a foreign power, as
8 those terms are defined in section
9 101 of the Foreign Intelligence
10 Surveillance Act of 1978 (50
11 U.S.C. 1801);

12 (bb) a member or affiliate of
13 a foreign terrorist organization
14 designated under section 219(a)
15 of the Immigration and Nation-
16 ality Act (8 U.S.C. 1189(a));

17 (cc) designated as a Spe-
18 cially Designated Global Ter-
19 rorist by the Department of the
20 Treasury under Executive Order
21 13224 (66 Fed. Reg. 49079);

22 (dd) a specially designated
23 terrorist, as that term is defined
24 in section 595.311 of title 31,

10

1 Code of Federal Regulations (or
2 any successor thereto);

3 (ee) a terrorist organization,
4 as that term is defined in section
5 12(a)(3)(B)(vi)(II) of the Immi-
6 gration and Nationality Act (8
7 U.S.C. 1182(a)(3)(B)(vi)(II));

8 (ff) committing or attempt-
9 ing to commit the crime of ter-
10 rorism, as that offense is defined
11 in section 2331(5) or
12 2332b(g)(5) of title 18, United
13 States Code;

14 (gg) committing or attempt-
15 ing the crime of providing mate-
16 rial support, as that term is de-
17 fined in section 2339A(b)(1) of
18 title 18, United States Code, to a
19 terrorist organization; or

20 (hh) aiding, abetting, or
21 conspiring in illegal activity with
22 a person or organization defined
23 in items (aa) through (gg).

24 (B) JUDICIAL DISCRETION.—In the case of
25 a person that does not fit within the definition

1 of “covered journalist” described in subclause
2 (I) or (II) of paragraph (A)(i), a judge of the
3 United States may exercise discretion to avail
4 the person of the protections of this Act if,
5 based on specific facts contained in the record,
6 the judge determines that such protections
7 would be in the interest of justice and necessary
8 to protect lawful and legitimate news-gathering
9 activities under the specific circumstances of
10 the case.

11 On page 21, beginning on line 8, strike “person” and
12 insert “journalist”.

13 On page 21, line 12, strike “person” and insert
14 “journalist”.

15 On page 21, after line 18, add the following:

16 (8) RELEVANT DATE.—The term “relevant
17 date” means the date on which the protected infor-
18 mation sought was obtained or created by the person
19 asserting protection under this Act.