Constitutional Authority Statement

To accompany:
Protect Reporters from Exploitative State Spying (PRESS) Act

Pursuant to clause 7 of Rule XII of the Rules of the House of Representatives, the following statement is submitted regarding the specific powers granted to Congress in the Constitution to enact the accompanying bill or joint resolution.

Congress has the power to enact this legislation pursuant to the following:

Art. I, Sec. 8
H. R. ________

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

IN THE HOUSE OF REPRESENTATIVES

Mr. RASKIN introduced the following bill; which was referred to the Committee on ______________________

A BILL

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

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3 SECTION 1. SHORT TITLE.
4 This Act may be cited as the “Protect Reporters from
5 Exploitative State Spying Act” or the “PRESS Act”.
6 SEC. 2. DEFINITIONS.
7 In this Act:
(1) Covered Journalist.—The term “covered journalist” means a person who 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.

(2) Covered Service Provider.—

(A) In General.—The term “covered service provider” means any person that, by an electronic means, stores, processes, or transmits information in order to provide a service to customers of the person.

(B) Inclusions.—The term “covered service provider” includes—

(i) a telecommunications carrier and a provider of an information service (as such terms are defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153));

(ii) a provider of an interactive computer service and an information content provider (as such terms are defined in section 230 of the Communications Act of 1934 (47 U.S.C. 230));
(iii) a provider of remote computing
service (as defined in section 2711 of title
18, United States Code); and
(iv) a provider of electronic commu-
nication service (as defined in section 2510
of title 18, United States Code) to the
public.

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

(4) FEDERAL ENTITY.—The term "Federal en-
tity" 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 sub-
poena or issue other compulsory process.

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

(6) PERSONAL ACCOUNT OF A COVERED JOUR-
INALIST.—The term "personal account of a covered
journalist” means an account with a covered service provider used by a covered journalist that is not provided, administered, or operated by the employer of the covered journalist.

(7) Personal Technology Device of a Covered Journalist.—The term “personal technology device of a covered journalist” means a handheld communications device, laptop computer, desktop computer, or other internet-connected device used by a covered journalist that is not provided or administered by the employer of the covered journalist.

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

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

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

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

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

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

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

(b) NOTICE TO COURT.—A Federal entity seeking to compel the provision of testimony or any document described in subsection (a) shall inform the court that the testimony or document relates to a covered journalist.

(c) NOTICE TO COVERED JOURNALIST AND OPPORTUNITY TO BE HEARD.—

(1) IN GENERAL.—A court may authorize a Federal entity to compel the provision of testimony or a document under this section only after the Federal entity seeking the testimony or document provides the covered journalist who is a party to the business transaction described in subsection (a)—

(A) notice of the subpoena or other compulsory request for such testimony or document from the covered service provider not later than the time at which such subpoena or request is issued to the covered service provider; and

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

(2) EXCEPTION TO NOTICE REQUIREMENT.—

(A) IN GENERAL.—Notice and an opportunity to be heard under paragraph (1) may be
delayed for not more than 45 days if the court involved determines there is clear and convincing evidence that such notice would pose a clear and substantial threat to the integrity of a criminal investigation, or would present an imminent risk of death or serious bodily harm.

(B) EXTENSIONS.—The 45-day period described in subparagraph (A) may be extended by the court for additional periods of not more than 45 days if the court involved makes a new and independent determination that there is clear and convincing evidence that providing notice to the covered journalist would pose a clear and substantial threat to the integrity of a criminal investigation, or would present an imminent risk of death or serious bodily harm under current circumstances.

SEC. 5. LIMITATION ON CONTENT OF INFORMATION.

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

(1) not be overbroad, unreasonable, or oppressive, and as appropriate, be limited to the purpose of verifying published information or describing any surrounding circumstances relevant to the accuracy of such published information; and
(2) be narrowly tailored in subject matter and period of time covered so as to avoid compelling the production of peripheral, nonessential, or speculative information.

SEC. 6. RULE OF CONSTRUCTION.

Nothing in this Act shall be construed to—

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

(2) prevent the Federal Government from pursuing an investigation of a covered journalist or organization that is—

(A) suspected of committing a crime;

(B) a witness to a crime unrelated to engaging in journalism;

(C) suspected of being an agent of a foreign power, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801);

(D) an individual or organization designated under Executive Order 13224 (50 U.S.C. 1701 note; relating to blocking property and prohibiting transactions with persons who
commit, threaten to commit, or support terrorism);

(E) 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

(F) 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)).