

**AMENDMENT TO THE AMENDMENT IN THE NATURE OF A
SUBSTITUTE TO THE COMMITTEE REPORT FOR THE RESOLUTION
RECOMMENDING THAT THE HOUSE OF REPRESENTATIVES FIND
MARK ZWONITZER IN CONTEMPT OF CONGRESS FOR REFUSAL
TO COMPLY WITH A SUBPOENA DULY ISSUED BY THE
COMMITTEE ON THE JUDICIARY**

Offered by _____ of _____.

At page 13, strike all of Section B, titled “The First Amendment does not protect Zwonitzer’s noncompliance with the subpoena” through the middle of page 14, and insert:

B. The Committee is committed to recognizing and respecting the rights of journalists.

For decades, when facing compulsory legal process to reveal the identity of confidential sources, or to produce notes and other materials inherent to the journalistic process, reporters have argued in court that doing so is a violation of the right to freedom of speech and of the press,¹ particularly so when the party seeking that information is the government. Members of the press have generally argued that they can only obtain truthful information from sources if the sources are assured that their identities will be protected and that “forced disclosure of confidential or unpublished sources and information will cause individuals to refuse to talk to reporters, resulting in a ‘chilling effect’ on the free flow of information and the public’s right to know.”²

In response to the above-described need for a federal reporter’s privilege, several Congresses have previously considered bills to create a federal reporter shield. The “Free Flow of Information Act” was first introduced in the House on February 2, 2005, by then-Representative Mike Pence (R-IN).³ Since then, versions of the legislation have been reintroduced over multiple Congresses by both Republican and Democratic Members.⁴ In the 118th Congress, Reps. Kevin Kiley (R-CA), alongside other Republican and Democratic members, introduced H.R. 4250, the “Protect Reporters from Exploitative State Spying Act” or the “PRESS Act.”

¹ The First Amendment to the United States Constitution provides, in relevant part, that “Congress shall make no law . . . abridging the freedom of speech, or of the press . . .” U.S. Const. amdt. I.

² *Introduction to the Reporter’s Privilege Compendium*, The Reporters Comm. For Freedom of the Press, <https://www.rcfp.org/introduction-to-the-reporters-privilege-compendium/>.

³ Free Flow of Information Act of 2005, H.R. 581, 109th Cong. (2005).

⁴ *See, e.g.*, Free Flow of Information Act of 2007, H.R. 2102, 110th Cong. (2007); Free Flow of Information Act of 2013, H.R. 1962, 113th Cong. (2013); Free Flow of Information Act of 2017, H.R. 4382, 115th Cong. (2017); PRESS Act, H.R. 4330, 117th Cong. (2021).

H.R. 4250 would create a qualified federal statutory privilege that protects covered journalists from being compelled by a federal entity (i.e., an entity or employee of the judicial or executive branch of the federal government with power to issue a subpoena or other compulsory process) to reveal confidential sources and information. The bill defines “covered journalist” as “a person who regularly gathers, prepares, collects, photographs, records, writes, edits, reports, investigates, or publishes news or information that concerns local, national, or international events or other matters of public interest for dissemination to the public” – a definition that almost certainly applies to Mr. Zwonitzer.

Under the PRESS Act, the federal entity seeking to compel disclosure of protected information can defeat this privilege if a court determines, after providing the journalist notice and an opportunity to be heard in court, that the disclosure is necessary to prevent or identify any perpetrator of an act of terrorism or to prevent a threat of imminent violence, significant bodily harm, or death. The bill also prohibits a federal entity from compelling a covered service provider (such as a telecommunications carrier, interactive computer service, or remote computing service) to disclose testimony or documents consisting of any record, information, or other communication stored by the covered service provider on behalf of a covered journalist, as well as testimony or documents relating to the covered journalist’s personal account or personal technology device, unless a court determines that there is a reasonable threat of imminent violence and the court issues an order authorizing the federal entity to compel the disclosure.

The PRESS Act enjoys broad bipartisan support. In July 2023, under Chairman Jordan’s leadership, the House Judiciary Committee passed H.R. 4250 by a vote of 23-0. In January 2024, the House passed H.R. 4250 by voice vote under a motion to suspend the rules.

The broad support for the PRESS Act highlights this Committee’s general support for a reporter’s privilege, making the demands made by Chairman Jordan of Mr. Zwonitzer particularly confusing and hypocritical. It is vital that Chairman Jordan uphold the same standards for all journalists, and not exclusively work to protect conservative journalists with whom he agrees.

Therefore, as a journalist, the Committee respects Mr. Zwonitzer’s right not to turn over his source material.