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(Original Signature of Member)

119TH CONGRESS
2D SESSION

H. R.

To protect the separation of powers enshrined in the United States Constitution and end the weaponized surveillance of Members of Congress.

IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the Committee on _____

A BILL

To protect the separation of powers enshrined in the United States Constitution and end the weaponized surveillance of Members of Congress.

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 “Congressional Records
5 Protection Act”.

1 **SEC. 2. PROHIBITION ON OBTAINING RECORDS FOR MEM-**
2 **BERS OF CONGRESS.**

3 (a) IN GENERAL.—Title 18, United States Code, is
4 amended by adding at the end the following:

5 **“CHAPTER 239—CONGRESSIONAL**
6 **RECORDS**

7 **“§ 3773. Prohibition on obtaining records for Mem-**
8 **bers of Congress or congressional em-**
9 **ployees**

10 “(a) PROHIBITION ON OBTAINING RECORDS.—

11 “(1) IN GENERAL.—Notwithstanding any other
12 provision of Federal or State law, a governmental
13 entity may not—

14 “(A) seek or obtain a search warrant,
15 grand jury subpoena, court order, statutory au-
16 thorization, certification, or subpoena that could
17 reasonably be expected to return any covered
18 material; or

19 “(B) issue an administrative order that
20 could reasonably be expected to return any cov-
21 ered material.

22 “(2) EXCEPTION.—This subsection shall not
23 apply if the subject of the search warrant, grand
24 jury subpoena, court order, statutory authorization,
25 certification, subpoena, or administrative order is—

1 “(A) the target of a criminal investigation;

2 or

3 “(B) a third party and the search warrant,
4 grand jury subpoena, court order, statutory au-
5 thorization, certification, subpoena, or adminis-
6 trative order demands records, information, or
7 the content of communications pertaining to a
8 Member of Congress or congressional employee
9 who is the target of a criminal investigation.

10 “(b) NOTIFICATION REQUIREMENT.—

11 “(1) NOTICE.—

12 “(A) IN GENERAL.—A governmental entity
13 shall notify the Member of Congress or congress-
14 sional employee—

15 “(i) prior to or concurrently with the
16 execution of a search warrant, grand jury
17 subpoena, court order, statutory authoriza-
18 tion, certification, administrative order, or
19 subpoena that could reasonably be ex-
20 pected to return any covered material; or

21 “(ii) as soon as practicable following
22 the execution of a search warrant, grand
23 jury subpoena, court order, statutory au-
24 thorization, certification, administrative

1 order, or subpoena that unexpectedly re-
2 turns covered material.

3 “(B) EXCEPTION.—If a subject of the
4 search warrant, grand jury subpoena, court
5 order, statutory authorization, certification,
6 subpoena, or administrative order is the target
7 of a criminal investigation or if the subject is
8 a third party and the search warrant, grand
9 jury subpoena, court order, statutory authoriza-
10 tion, certification, subpoena, or administrative
11 order demands records, information, or the con-
12 tent of communications pertaining to a Member
13 of Congress or congressional employee who is
14 the target of a criminal investigation, a court
15 may, upon application by the governmental en-
16 tity, issue an order delaying the notice required
17 under subparagraph (A)(i) with respect to an
18 acquisition, subpoena, search, accessing, or dis-
19 closure that could reasonably be expected to re-
20 turn covered material in connection with such
21 investigation for a period of not more than 10
22 days if the court determines that there is rea-
23 son to believe that providing notice would—

24 “(i) endanger the life or physical safe-
25 ty of any person;

1 “(ii) result in flight from prosecution;

2 “(iii) result in destruction of or tam-
3 pering with evidence;

4 “(iv) result in intimidation of poten-
5 tial witnesses; or

6 “(v) otherwise seriously jeopardize an
7 investigation or unduly delay a trial.

8 “(2) DELAYED REVIEW.—

9 “(A) IN GENERAL.—The governmental en-
10 tity may not review materials that are reason-
11 ably expected to contain covered material until
12 the date that is 30 days after the date notice
13 is made pursuant to paragraph (1)(A)(i).

14 “(B) UNEXPECTED RETURN OF COVERED
15 MATERIALS.—In instances where a search war-
16 rant, grand jury subpoena, court order, statu-
17 tory authorization, certification, administrative
18 order, or subpoena unexpectedly returns covered
19 material, the governmental entity shall halt re-
20 view of the returned material upon the dis-
21 covery of the covered material until the date
22 that is 30 days after the date notice is made
23 pursuant to paragraph (1)(A)(ii).

24 “(C) EXCEPTION.—Subparagraphs
25 (b)(2)(A) and (b)(2)(B) shall not apply when a

1 30-day delay in reviewing materials could cause
2 an imminent risk to life or serious bodily injury.

3 “(c) RULE OF CONSTRUCTION.—This section may
4 not be construed to limit the scope of any protection appli-
5 cable under article I, section 6, clause 1 of the Constitu-
6 tion of the United States.

7 “(d) DEFINITIONS.—In this section:

8 “(1) CONGRESSIONAL EMPLOYEE.—The term
9 ‘congressional employee’ has the meaning given that
10 term in subparagraphs (1), (2), (3), and (5) of sec-
11 tion 2107 of title 5 and includes current and former
12 congressional employees.

13 “(2) COVERED MATERIAL.—The term ‘covered
14 material’ means—

15 “(A) records, including all written mate-
16 rials, wire communications, and electronic com-
17 munications, that were prepared by, shared
18 with, or otherwise obtained by a Member of
19 Congress or congressional employee in the
20 course of their official duties, including elec-
21 tronic devices containing such records; and

22 “(B) records from an electronic or wire
23 communication service related to any accounts
24 of Members and from the time period of their
25 service in Congress or official congressional ac-

1 counts of congressional employees, or related to
2 any communications between a Member of Con-
3 gress or congressional employee and other
4 Members of Congress, other congressional em-
5 ployees, or executive branch employees while at
6 least one party to the communication was serv-
7 ing or working in Congress and another party
8 to the communication was serving or working in
9 Congress or the Executive Branch.

10 “(3) WIRE COMMUNICATION; ELECTRONIC COM-
11 MUNICATION.—The terms ‘wire communication,’
12 ‘electronic communication,’ and ‘electronic commu-
13 nication service’ have the meanings given those
14 terms in section 2510.

15 “(4) GOVERNMENTAL ENTITY.—The term ‘gov-
16 ernmental entity’ means a department or agency of
17 the United States or any State or political subdivi-
18 sion thereof.

19 “(5) MEMBER OF CONGRESS.—The term ‘Mem-
20 ber of Congress’ means a current or former Senator
21 or Representative in, or Delegate or Resident Com-
22 missioner to, the United States Congress.

23 “(6) EXECUTIVE BRANCH EMPLOYEE.—The
24 term ‘executive branch employee’ has the meaning
25 given that term in subparagraph (2)(A) of section

1 78u-1(h) of title 15 and includes current and former
2 executive branch employees.

3 “(7) SUBJECT OF THE SEARCH WARRANT,
4 GRAND JURY SUBPOENA, COURT ORDER, STATUTORY
5 AUTHORIZATION, CERTIFICATION, SUBPOENA, OR
6 ADMINISTRATIVE ORDER.—The term ‘subject of the
7 search warrant, grand jury subpoena, court order,
8 statutory authorization, certification, subpoena, or
9 administrative order’ means the person whose
10 records are sought by the governmental entity, or, if
11 records are sought from an electronic or wire com-
12 munication service, the person to whom the sought
13 records pertain.

14 “(8) TARGET OF A CRIMINAL INVESTIGA-
15 TION.—The term ‘target of a criminal investigation’
16 means a person whom a governmental entity has
17 probable cause to believe has committed a crime. If
18 the person is a Member of Congress or a congres-
19 sional employee, then the governmental entity shall
20 submit an application certifying to a magistrate
21 judge with authority in the district—or if there is
22 none reasonably available, a judge of a court of
23 record in the district—that there is probable cause
24 to believe the person has committed a crime. The
25 judge must certify that the application establishes

1 that probable cause exists prior to or concurrently
2 with the governmental entity seeking, obtaining, or
3 issuing a search warrant, grand jury subpoena,
4 court order, statutory authorization, certification,
5 subpoena, or administrative order for covered mate-
6 rial.

7 “(9) THIRD PARTY.—The term ‘third party’
8 means any person who is not a Member of Congress
9 or congressional employee.”.

10 (b) CLERICAL AMENDMENT.—The table of chapters
11 at the beginning of part I of title 18, United States Code,
12 is amended by inserting after the item relating to chapter
13 238 the following new item:

 “239. Congressional Records 3773”.