

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 4330
OFFERED BY MR. NADLER OF NEW YORK**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Protect Reporters from
3 Exploitative State Spying Act” or the “PRESS Act”.

4 SEC. 2. DEFINITIONS.

5 In this Act:

6 (1) COVERED JOURNALIST.—The term “covered
7 journalist” means a person who regularly gathers,
8 prepares, collects, photographs, records, writes,
9 edits, reports, or publishes news or information that
10 concerns local, national, or international events or
11 other matters of public interest for dissemination to
12 the public.

13 (2) COVERED SERVICE PROVIDER.—

14 (A) IN GENERAL.—The term “covered
15 service provider” means any person that, by an
16 electronic means, stores, processes, or transmits
17 information in order to provide a service to cus-
18 tomers of the person.

1 (B) INCLUSIONS.—The term “covered
2 service provider” includes—

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

7 (ii) a provider of an interactive com-
8 puter service and an information content
9 provider (as such terms are defined in sec-
10 tion 230 of the Communications Act of
11 1934 (47 U.S.C. 230));

12 (iii) a provider of remote computing
13 service (as defined in section 2711 of title
14 18, United States Code); and

15 (iv) a provider of electronic commu-
16 nication service (as defined in section 2510
17 of title 18, United States Code) to the
18 public.

19 (3) DOCUMENT.—The term “document” means
20 writings, recordings, and photographs, as those
21 terms are defined by Federal Rule of Evidence 1001
22 (28 U.S.C. App.).

23 (4) FEDERAL ENTITY.—The term “Federal en-
24 tity” means an entity or employee of the judicial or
25 executive branch or an administrative agency of the

1 Federal Government with the power to issue a sub-
2 poena or issue other compulsory process.

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

10 (6) PERSONAL ACCOUNT OF A COVERED JOUR-
11 NALIST.—The term “personal account of a covered
12 journalist” means an account with a covered service
13 provider used by a covered journalist that is not pro-
14 vided, administered, or operated by the employer of
15 the covered journalist.

16 (7) PERSONAL TECHNOLOGY DEVICE OF A COV-
17 ERED JOURNALIST.—The term “personal technology
18 device of a covered journalist” means a handheld
19 communications device, laptop computer, desktop
20 computer, or other internet-connected device used by
21 a covered journalist that is not provided or adminis-
22 tered by the employer of the covered journalist.

23 (8) PROTECTED INFORMATION.—The term
24 “protected information” means any information
25 identifying a source who provided information as

1 part of engaging in journalism, and any records,
2 contents of a communication, documents, or infor-
3 mation that a covered journalist obtained or created
4 as part of engaging in journalism.

5 **SEC. 3. LIMITS ON COMPELLED DISCLOSURE FROM COV-**
6 **ERED JOURNALISTS.**

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

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

17 (2) disclosure of the protected information is
18 necessary to prevent a threat of imminent violence,
19 significant bodily harm, or death, including specified
20 offenses against a minor (as defined by section
21 111(7) of the Adam Walsh Child Protection and
22 Safety Act of 2006 (34 U.S.C. 20911(7))).

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

3 (a) **CONDITIONS FOR COMPELLED DISCLOSURE.**—In
4 any matter arising under Federal law, a Federal entity
5 may not compel a covered service provider to provide testi-
6 mony or any document consisting of any record, informa-
7 tion, or other communications stored by a covered provider
8 on behalf of a covered journalist, including testimony or
9 any document relating to a personal account of a covered
10 journalist or a personal technology device of a covered
11 journalist, unless a court in the judicial district in which
12 the subpoena or other compulsory process is, or will be,
13 issued determines by a preponderance of the evidence that
14 there is a reasonable threat of imminent violence unless
15 the testimony or document is provided, and issues an
16 order authorizing the Federal entity to compel the disclo-
17 sure of the testimony or document.

18 (b) **NOTICE TO COURT.**—A Federal entity seeking to
19 compel the provision of testimony or any document de-
20 scribed in subsection (a) shall inform the court that the
21 testimony or document relates to a covered journalist.

22 (c) **NOTICE TO COVERED JOURNALIST AND OPPOR-**
23 **TUNITY TO BE HEARD.**—

24 (1) **IN GENERAL.**—A court may authorize a
25 Federal entity to compel the provision of testimony
26 or a document under this section only after the Fed-

1 eral entity seeking the testimony or document pro-
2 vides the covered journalist on behalf of whom the
3 testimony or document is stored pursuant to sub-
4 section (a)—

5 (A) notice of the subpoena or other com-
6 pulsory request for such testimony or document
7 from the covered service provider not later than
8 the time at which such subpoena or request is
9 issued to the covered service provider; and

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

13 (2) EXCEPTION TO NOTICE REQUIREMENT.—

14 (A) IN GENERAL.—Notice and an oppor-
15 tunity to be heard under paragraph (1) may be
16 delayed for not more than 45 days if the court
17 involved determines there is clear and con-
18 vincing evidence that such notice would pose a
19 clear and substantial threat to the integrity of
20 a criminal investigation, or would present an
21 imminent risk of death or serious bodily harm,
22 including specified offenses against a minor (as
23 defined by section 111(7) of the Adam Walsh
24 Child Protection and Safety Act of 2006 (34
25 U.S.C. 20911(7))).

1 (B) EXTENSIONS.—The 45-day period de-
2 scribed in subparagraph (A) may be extended
3 by the court for additional periods of not more
4 than 45 days if the court involved makes a new
5 and independent determination that there is
6 clear and convincing evidence that providing no-
7 tice to the covered journalist would pose a clear
8 and substantial threat to the integrity of a
9 criminal investigation, or would present an im-
10 minent risk of death or serious bodily harm
11 under current circumstances.

12 **SEC. 5. LIMITATION ON CONTENT OF INFORMATION.**

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

15 (1) not be overbroad, unreasonable, or oppres-
16 sive, and as appropriate, be limited to the purpose
17 of verifying published information or describing any
18 surrounding circumstances relevant to the accuracy
19 of such published information; and

20 (2) be narrowly tailored in subject matter and
21 period of time covered so as to avoid compelling the
22 production of peripheral, nonessential, or speculative
23 information.

24 **SEC. 6. RULE OF CONSTRUCTION.**

25 Nothing in this Act shall be construed to—

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

5 (2) prevent the Federal Government from pur-
6 suing an investigation of a covered journalist or or-
7 ganization that is—

8 (A) suspected of committing a crime;

9 (B) a witness to a crime unrelated to en-
10 gaging in journalism;

11 (C) suspected of being an agent of a for-
12 eign power, as defined in section 101 of the
13 Foreign Intelligence Surveillance Act of 1978
14 (50 U.S.C. 1801);

15 (D) an individual or organization des-
16 ignated under Executive Order 13224 (50
17 U.S.C. 1701 note; relating to blocking property
18 and prohibiting transactions with persons who
19 commit, threaten to commit, or support ter-
20 rorism);

21 (E) a specially designated terrorist, as that
22 term is defined in section 595.311 of title 31,
23 Code of Federal Regulations (or any successor
24 thereto); or

1 (F) a terrorist organization, as that term
2 is defined in section 212(a)(3)(B)(vi)(II) of the
3 Immigration and Nationality Act (8 U.S.C.
4 1182(a)(3)(B)(vi)(II)).

