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By email

July 20, 2023

United States Senate
Washington, D.C. 20510

Re: Oppose Senate Amendment 218 to S. 2226.

Dear Senator:

The Reporters Committee for Freedom of the Press and the 30 undersigned members and representatives of the news media respectfully write in opposition to proposed SA 218 to S. 2226, the FY2024 National Defense Authorization Act. While we acknowledge language that attempts to limit its scope, the legislation, if passed, would pose a threat to lawful newsgathering and reporting about members of Congress and their families, and raise serious First Amendment concerns.

SA 218 would give members of Congress and their families a potent means of forcing private entities to scrub “covered information,” as defined, from the public domain, which could impair newsgathering by limiting the store of available information to reporters as well as creating uncertainty for journalists on whether they are directly covered. While the definition of covered information is narrower than the Judicial Security and Privacy Act on which SA 218 is based, it still includes data—including, for example, primary or secondary home addresses, home or personal phone numbers and emails, and historical geolocation information—that may be in the public interest and is of value to journalists. *See* SA 218, § (a)(3).

Although the bill includes exceptions that purport to protect newsgathering and reporting, those exceptions create more problems than they solve. Specifically, the bill states that it does not apply to commercial entities engaged in “reporting, news-gathering, speaking, or other activities intended to inform the public on matters of public interest or public concern.” SA 218, § (a)(4)(B)(i). It also exempts the display on the internet or transfer of covered information if “relevant to and displayed as part of a news story, commentary, editorial, or other speech on a matter of public concern.” SA 218, § (d)(1)(B)(ii)(I), (d)(2)(B)(ii)(I).

Notwithstanding that language, representatives, senators, and certain relations¹ could still request that a news organization delete stories containing what they claim is covered information or file a lawsuit seeking

¹ The legislation also applies to individuals living in the household of a member of Congress as well as employees of the House of Representatives and Senate who are identified by the Office of House Security or Director of Senate Security as the target of an ongoing threat. SA 218, § (a)(2)(D)-(F).

injunctive or declaratory relief requiring that the news organization do so, arguing that the stories are not in the public interest or not of public concern.

In the former case, such harassment could chill reporting. And in the latter case, in addition to the undue litigation burden on the press, if courts err, they could suppress valuable news. The bill also provides that it should be “broadly construed to favor the protection of the covered information of” covered individuals, which would place news organization defendants at a disadvantage in court. SA 218, § (f)(2). And that broad construction is at odds with the general rule that statutes burdening free expression be narrowly construed. Indeed, courts will invalidate statutes in their entirety if they burden too much protected speech, unless they can find a narrowing construction limiting that overbreadth. *See Broadrick v. Oklahoma*, 413 U.S. 601, 613-17 (1973). Finally, these exceptions do nothing to address the fact that the repositories of information that journalists rely on when reporting on members of Congress would be scrubbed of valuable information under the bill.

Importantly, the covered information in the legislation remains subject to the First Amendment and courts have invalidated measures limiting the distribution of public figures’ and public officials’ personal information, in recognition that such information is often central to political debate and government accountability. In *Organization for a Better Austin v. Keefe*, for instance, the Supreme Court vacated an injunction against the distribution of pamphlets with a realtors’ home phone number seeking to encourage the realtor to sign a non-solicitation agreement. 402 U.S. 415, 420 (1971). More recently, a federal court in California held that the publication of legislators’ personal information in protest of a measure that would require the government to maintain a database of individuals who purchase firearms and ammunition was protected speech. *See Publius v. Boyer-Vine*, 237 F. Supp. 3d 997, 1029 (E.D. Cal. 2017).

Congress has ample authority and means to address true threats to members and their families, but it must not and constitutionally cannot insulate itself from press scrutiny under the guise of security, which SA 218 would do. Please do not hesitate to contact Gabe Rottman, director of the Technology and Press Freedom Project at the Reporters Committee, with any questions. He can be reached at grottman@rcfp.org.

Sincerely,

Reporters Committee
for Freedom of the Press

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The Atlantic Monthly Group LLC
Boston Globe Media Partners, LLC
The Center for Investigative Reporting (d/b/a Reveal)
Committee to Protect Journalists
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