AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
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113TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPT. 113–184
Part 1

CITIZEN EMPOWERMENT ACT

JULY 30, 2013.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ISSA, from the Committee on Oversight and Government Reform, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 2711]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 2711) to amend title 5, United States Code, to establish certain procedures for conducting in-person or telephonic interactions by Executive branch employees with individuals, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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29–006

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Citizen Empowerment Act".

SEC. 2. AMENDMENTS.

(a) IN GENERAL.—Part III of title 5, United States Code, is amended by inserting after chapter 79, the following:

"CHAPTER 79A—SERVICES TO MEMBERS OF THE PUBLIC

"Sec.
"7921. Procedure for in-person and telephonic interactions conducted by Executive Branch employees.

"§ 7921. Procedure for in-person and telephonic interactions conducted by Executive Branch employees

"(a) PURPOSE.—The purpose of this section is to ensure that individuals have the right to record in-person and telephonic interactions with Executive agency employees and to ensure that individuals who are the target of enforcement actions conducted by Executive agency employees are notified of such right.

"(b) DEFINITIONS.—For purposes of this section—

"(1) the term 'telephonic' means by telephone or other similar electronic device; and

"(2) the term 'employee' means an employee of an Executive agency.

"(c) CONSENT OF EXECUTIVE AGENCY EMPLOYEES.—Participation by an employee, acting in an official capacity, in an in-person or telephonic interaction shall constitute consent by the employee to a recording of that interaction by any participant in the interaction.

"(d) NOTICE OF RIGHTS WHEN FEDERAL EMPLOYEES ENGAGED IN CERTAIN ACTIONS.—A notice of an individual's right to record conversations with employees shall be included in any written material provided by an Executive agency to the individual concerning an audit, investigation, inspection, or enforcement action that could result in the imposition of a fine, forfeiture of property, civil monetary penalty, or criminal penalty against, or the collection of an unpaid tax, fine, or penalty from, such individual or a business owned or operated by such individual.

"(e) OFFICIAL REPRESENTATIVE.—Any person who is permitted to represent before an Executive agency an individual under this section shall receive the same notice as required under subsection (d) with respect to such individual.

"(f) NO CAUSE OF ACTION.—This section does not create any express or implied private right of action.

"(g) DISCIPLINARY ACTION.—An employee who violates this section shall be subject to appropriate disciplinary action in accordance with otherwise applicable provisions of law.

"(h) PUBLIC INFORMATION CONCERNING RIGHT TO RECORD.—

"(1) POSTING ON AGENCY WEB SITES.—Within 180 days after the date of the enactment of this Act, each Executive agency shall post prominently on its Web site information explaining the right of individuals to record interactions with employees.

"(2) OMB GUIDANCE.—Within 90 days after the date of the enactment of this Act, the Office of Management and Budget shall issue guidance to Executive agencies concerning implementation of paragraph (1).".

(b) CLERICAL AMENDMENT.—The analysis for part III of title 5, United States Code, is amended by inserting after the item relating to chapter 79 the following:

"79A. Services to members of the public ..... 7921".

COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

H.R. 2711 ensures that individuals have a right to record their meetings and telephone exchanges with federal officials, including regulatory officials engaged in enforcement activities. Individuals are to be notified of such right by federal agencies.

BACKGROUND AND NEED FOR LEGISLATION

Federal agencies not only get to write rules, they get to enforce them. According to George Washington University law professor Jonathan Turley, "a citizen is 10 times more likely to be tried by an agency than by an actual court. In any given year, federal judges conduct roughly 95,000 adjudicatory proceedings, including trials, while federal agencies complete more than 939,000."

In these proceedings, citizens have fewer rights than in a courtroom. It is the case that some Federal officials have intimidated, coerced, or lied to individuals, violating the public trust and potentially breaking laws. When Federal officials behave badly, far too often the citizen lacks evidence to prove the misconduct occurred.

This bill ensures that individuals have the right to record their meetings and telephone exchanges with federal regulatory officials engaged in enforcement activities, and requires that agencies take steps to notify individuals of such right, by providing notification in written material concerning an audit, inspection, investigation, etc. and on agency websites.

The manager's amendment ensures that law enforcement officers (LEOs) would not be impacted adversely. It would not restrict the ability of LEOs to conduct, e.g., undercover investigations and wiretap surveillance.

LEGISLATIVE HISTORY

H.R. 2711 was introduced by Rep. Lynn Jenkins on July 17, 2013. The legislation was considered by the Oversight and Government Reform Committee on July 24, 2013. The Committee adopted an amendment in the nature of a substitute (ANS) offered by Mr. Issa. The ANS made substantial changes to the legislation, and was agreed to by voice vote. The bill was reported favorably to the House, as amended, a quorum being present, by voice vote.

SECTION-BY-SECTION

Section 1. Short title

The title of this legislation is the "Citizen Empowerment Act."

Section 2. Amendments

The section adds a new chapter to title 5, U.S.C., "Chapter 79A—Services to Members of the Public," and inserts the following:

§ 7921. Procedures for in-person and telephonic interactions conducted by executive branch employees."

The purpose of this section is to ensure that individuals have the right to record in-person and telephonic interactions with Executive agency employees and to ensure that individuals who are the target of enforcement actions conducted by Executive agency employees are notified of such right.

Definitions:

(1) The term "telephonic" means by telephone or other similar electronic device; and

(2) The term "employee" means an employee of an Executive agency.

Consent of Executive Agency Employees. Under this section, there is implied consent given by any Executive agency employee

to record a conversation when an employee is acting in an official capacity. This revises the existing status quo, in which the federal official can arbitrarily decide whether to consent to a recording on a case by case basis, with respect to certain jurisdictions.

Notice of Rights When Federal Employees Engaged in Certain Actions. A notice of an individual's right to record conversations with employees is to be included in any written material provided by an Executive agency to the individual concerning an audit, investigation, inspection, or enforcement action that could result in the imposition of a fine, forfeiture of property, civil monetary penalty, or criminal penalty against, or the collection of an unpaid tax, fine, or penalty from that individual or their business.

Official Representation. Those with legal authority to represent a covered individual shall receive the same notice.

No Cause of Action. This section does not create any express or implied private right of action.

Disciplinary Action. An employee who violates this section is subject to appropriate disciplinary action.

Public Information Concerning Right to Record. Within 90 days, OMB must issue guidance to agencies on posting the rights.

Within 180 days, agencies must prominently post the right to record.

EXPLANATION OF AMENDMENTS

The Committee adopted an amendment in the nature of a substitute offered by Mr. Issa. The ANS made substantial changes to the legislation and was agreed to by voice vote.

The Committee rejected by a vote of 14 ayes to 18 noes an amendment offered by Mr. Cummings that would have stipulated that nothing in the bill shall supersede any provisions of state law. The amendment was rejected because it is extraneous; the legislation does not over-ride or pre-empt state laws.

COMMITTEE CONSIDERATION

On July 24, 2013, the Committee met in open session and ordered reported favorably the bill, H.R. 2711 as amended, by voice vote, a quorum being present.

ROLL CALL VOTES

Meeting on: ___Full Committee Markup Vote #1_____ Date: _7/24/13_____
Vote on: _H.R. 2711 - amendment (#2) Cummings to Issa ANS

Republicans	Aye	No	Present	Democrats	Aye	No	Present
MR. ISSA (CA) *(Chairman)*		X		MR. CUMMINGS (MD) *(Ranking)*	X		
MR. MICA (FL)		X		MRS. MALONEY (NY)	X		
MR. TURNER (OH)		X		MS. NORTON (DC)			
MR. DUNCAN (TN)				MR. TIERNEY (MA)	X		
MR. McHENRY (NC)		X		MR. CLAY (MO)	X		
MR. JORDAN (OH)				MR. LYNCH (MA)	X		
MR. CHAFFETZ (UT)				MR. COOPER (TN)	X		
MR. WALBERG (MI)		X		MR. CONNOLLY (VA)	X		
MR. LANKFORD (OK)		X		MS. SPEIER (CA)			
MR. AMASH (MI)		X		MR. CARTWRIGHT (PA)	X		
DR. GOSAR (AZ)		X		MR. POCAN (WI)	X		
MR. MEEHAN (PA)		X		MRS. DUCKWORTH (IL)	X		
DR. DesJARLAIS (TN)		X		MS. KELLY (IL)			
MR. GOWDY (SC)		X		MR. DAVIS (IL)	X		
MR. FARENTHOLD (TX)		X		MR. WELCH (VT)	X		
MR. HASTINGS (WA)		X		MR. CARDENAS (CA)	X		
MRS. LUMMIS (WY)		X		MR. HORSFORD (NV)			
MR. WOODALL (GA)		X		MS. LUJAN GRISHAM (NM)	X		
MR. MASSIE (KY)		X					
MR. COLLINS (GA)		X					
MR. MEADOWS (NC)							
MR. BENTIVOLIO (MI)		X					
MR. DeSANTIS (FL)							

Roll Call Totals: Ayes 14 Nays 18 Present

Voice Vote: Passed Failed X Unanimous consent: Passed Failed

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July 30, 2013

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman Issa,

I am writing concerning H.R. 2711, the "Citizen Empowerment Act," which your Committee ordered reported on July 24, 2013.

As you know, H.R. 2711 contains provisions within the Committee on the Judiciary's Rule X jurisdiction. As a result of your having consulted with the Committee and in order to expedite the House's consideration of H.R. 2711, the Committee on the Judiciary will not assert is jurisdictional claim over this bill by seeking a sequential referral. However, this is conditional on our mutual understanding and agreement that doing so will in no way diminish or alter the jurisdiction of the Committee on the Judiciary with respect to the appointment of conferees or to any future jurisdictional claim over the subject matters contained in the bill or similar legislation.

I would appreciate your response to this letter confirming this understanding, and would request that you include a copy of this letter and your response in the Committee Report and in the *Congressional Record* during the floor consideration of this bill. Thank you in advance for your cooperation.

Sincerely,

Bob Goodlatte
Chairman

cc: The Honorable John Boehner, Speaker
The Honorable John Conyers
The Honorable Elijah Cummings
The Honorable Thomas J. Wickham, Jr., Parliamentarian

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July 30, 2013

The Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter regarding the Committee on the Judiciary's jurisdictional interest in H.R. 2711, the "Citizen Empowerment Act," and your willingness to forego consideration of H.R. 2711 by your committee.

I agree that the Committee on the Judiciary has a valid jurisdictional interest in certain provisions of H.R. 2711 and that the Committee's jurisdiction will not be adversely affected by your decision to forego consideration of H.R. 2711. As you have requested, I will support your request for an appropriate appointment of outside conferees from your Committee in the event of a House-Senate conference on this or similar legislation should such a conference be convened.

Finally, I will include a copy of your letter and this response in the Committee Report and in the *Congressional Record* during the floor consideration of this bill. Thank you again for your cooperation.

Sincerely,

Darrell Issa
Chairman

cc: The Honorable John Boehner, Speaker of the House

The Honorable Elijah Cummings, Ranking Minority Member

The Honorable John Conyers, Jr., Ranking Minority Member
Committee on the Judiciary

Mr. Tom Wickham, Parliamentarian

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill ensures that individuals have the right to record in-person and telephonic interactions with Executive agency employees and to ensure that individuals who are the target of enforcement actions conducted by Executive agency employees are notified of such right. Legislative branch employees and their families, to the extent that they are otherwise eligible for the benefits provided by this legislation, have equal access to its benefits.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 2711 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

Within 90 days of enactment, OMB must issue guidance to agencies on posting information concerning individuals' right to record interactions with employees.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104–4) requires a statement as to whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

H.R. 2711 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 2711. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 2711 from the Director of Congressional Budget Office:

JULY 29, 2013.

Hon. DARRELL ISSA,
Chairman, Committee on Oversight and Government Reform,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2711, the Citizens Empowerment Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 2711—Citizens Empowerment Act

Under H.R. 2711, participation by a federal employee, acting in an official capacity, in an in-person or telephone conversation would constitute consent to a recording of that conversation by another participant in the conversation. The bill would require federal employees to provide written notice of the public's right to record a conversation before meetings or phone calls take place. Agencies would be required to include a right-to-record statement on all written materials provided to the public as well as post that statement on their websites. Guidance on those statements would be provided by the Office of Management and Budget.

CBO expects that updating preprinted communications with the public would have no significant impact on administrative costs. The legislation also could affect direct spending by agencies not funded through annual appropriations; therefore, pay-as-you-go

procedures apply. CBO estimates, however, that any net increase in spending by those agencies would not be significant. Enacting the bill would not affect revenues.

H.R. 2711 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

* * * * * * *

PART III—EMPLOYEES

Subpart A—General Provisions

Chap.		Sec.
21.	**Definitions**	**2101**

* * * * * * *

Subpart F—Labor-Management and Employee Relations

* * * * * * *

79A.	***Services to members of the public***	***7921***

* * * * * * *

SUBPART F—LABOR-MANAGEMENT AND EMPLOYEE RELATIONS

* * * * * * *

CHAPTER 79A—SERVICES TO MEMBERS OF THE PUBLIC

Sec.

7921. Procedure for in-person and telephonic interactions conducted by Executive Branch employees.

§ 7921. Procedure for in-person and telephonic interactions conducted by Executive Branch employees

(a) PURPOSE.—The purpose of this section is to ensure that individuals have the right to record in-person and telephonic interactions with Executive agency employees and to ensure that individuals who are the target of enforcement actions conducted by Executive agency employees are notified of such right.

(b) DEFINITIONS.—For purposes of this section—

(1) the term "telephonic" means by telephone or other similar electronic device; and

(2) the term "employee" means an employee of an Executive agency.

(c) CONSENT OF EXECUTIVE AGENCY EMPLOYEES.—Participation by an employee, acting in an official capacity, in an in-person or telephonic interaction shall constitute consent by the employee to a recording of that interaction by any participant in the interaction.

(d) NOTICE OF RIGHTS WHEN FEDERAL EMPLOYEES ENGAGED IN CERTAIN ACTIONS.—A notice of an individual's right to record conversations with employees shall be included in any written material provided by an Executive agency to the individual concerning an audit, investigation, inspection, or enforcement action that could result in the imposition of a fine, forfeiture of property, civil monetary penalty, or criminal penalty against, or the collection of an unpaid tax, fine, or penalty from, such individual or a business owned or operated by such individual.

(e) OFFICIAL REPRESENTATIVE.—Any person who is permitted to represent before an Executive agency an individual under this section shall receive the same notice as required under subsection (d) with respect to such individual.

(f) NO CAUSE OF ACTION.—This section does not create any express or implied private right of action.

(g) DISCIPLINARY ACTION.—An employee who violates this section shall be subject to appropriate disciplinary action in accordance with otherwise applicable provisions of law.

(h) PUBLIC INFORMATION CONCERNING RIGHT TO RECORD.—

(1) POSTING ON AGENCY WEB SITES.—Within 180 days after the date of the enactment of this Act, each Executive agency shall post prominently on its Web site information explaining the right of individuals to record interactions with employees.

(2) OMB GUIDANCE.—Within 90 days after the date of the enactment of this Act, the Office of Management and Budget shall issue guidance to Executive agencies concerning implementation of paragraph (1).

* * * * * * *

MINORITY VIEWS

H.R. 2711, the Citizen Empowerment Act, was considered by the Committee without a single hearing. The bill as amended would interfere with laws put in place by 12 states to protect the privacy of their citizens.

The bill would presumptively deem every federal employee to have consented to the recording of every conversation they have in their official capacity. This would preempt the laws of the 12 states that require every party's consent before a conversation can be recorded. These laws protect individuals in those states regardless of whether the individual is a federal employee.

H.R. 2711 may also have an adverse impact on law enforcement. The Federal Law Enforcement Officers Association sent a letter to the Committee that stated:

> This legislation puts law enforcement activities at risk and does a disservice to the brave men and women who are asked to put their lives on the line to protect us from terrorists and criminals.[1]

The full letter is attached for inclusion in the report on this legislation.

The Committee should take the time to hold hearings and solicit the input of impacted states, law enforcement organizations, federal employee unions, and constitutional and privacy experts before bringing this legislation to the House floor.

ELIJAH E. CUMMINGS.

[1] Letter from Frank Terreri, National Vice President for Legislative Affairs, Federal Law Enforcement Officers Association, to Chairman Darrell E. Issa and Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (July 29, 2013).

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Fish & Wildlife Service
National Park Service
OIG
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JUSTICE
Bureau of Alcohol, Tobacco, Firearms & Explosives
Drug Enforcement Administration
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OIG
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LABOR- OIG & Racketeering
NATIONAL AERONAUTICS & SPACE ADMIN. - OIG
NUCLEAR REGULATORY COMMISSION - OIG
POSTAL SERVICE-OIG & Inspection
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SECURITIES & EXCHANGE COMMISSION - OIG
SMALL BUSINESS ADMINISTRATION - OIG
SOCIAL SECURITY ADMINISTRATION - OIG
STATE DEPARTMENT
Bureau of Diplomatic Security & OIG
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July 29, 2013

The Honorable Darrell Issa
Chairman
Committee on Oversight & Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

The Honorable Elijah Cummings
Ranking Member
Committee on Oversight & Government Reform
2471 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Issa and Ranking Member Cummings:

On behalf of the membership of the Federal Law Enforcement Officers Association (FLEOA), I am writing to oppose H.R. 2711- the "Citizen Empowerment Act," as amended by the Committee and urge you to further amend the bill to ensure that law enforcement and other public safety activities are not covered by its provisions.

As originally written, the legislation contained general exceptions for situations where classified information, public safety or an on-going law enforcement investigation would be at risk. This language was necessary to ensure that federal law enforcement officers and the critical work they perform are not adversely impacted by this bill. In fact, the original language should have gone even farther to make clear that law enforcement activities would not be jeopardized in any way.

For incomprehensible reasons the committee approved an amended bill that removed even basic exceptions.

When a federal law enforcement officer is conducting a criminal investigation via telephone, i.e. on a suspect of terrorism, the officer should not have to notify the suspect of the right to record the conversation and whether the officer is recording the conversation. Obviously, conventional wisdom tells us that any thought of conducting a successful investigation after disclosure of this type is impossible. There is no logical reason why criminal investigations shouldn't be exempted from the proposal.

This legislation puts law enforcement activities at risk and does a disservice to the brave men and women who are asked to put their lives on the line to protect us from terrorists and criminals. FLEOA opposes any actions by Congress that lessens the ability of our Citizenship to remain safe and secure and jeopardizes the ability of federal law enforcement officers to continue to perform their sworn duties to protect them.

As the Chair and Ranking Member with jurisdiction over H.R. 2711, we urge you to ensure that the bill is not considered on the Floor unless it is amended to exempt law enforcement from its provisions. Until that time, FLEOA will continue to strongly oppose this legislation.

Respectfully,

Frank Terreri

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