

TO PROTECT THE SAFETY OF JUDGES BY EXTENDING THE AUTHORITY OF
THE JUDICIAL CONFERENCE TO REDACT SENSITIVE INFORMATION
CONTAINED IN THEIR FINANCIAL DISCLOSURE REPORTS, AND FOR
OTHER PURPOSES

SEPTEMBER 26, 2017.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. GOODLATTE, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 3229]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill
(H.R. 3229) to protect the safety of judges by extending the author-
ity of the Judicial Conference to redact sensitive information con-
tained in their financial disclosure reports, and for other purposes,
having considered the same, report favorably thereon without
amendment and recommend that the bill do pass.

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Purpose and Summary

H.R. 3229 extends the current redaction authority for certain judicial public disclosure filings for another ten years until December 31, 2027.

Background and Need for the Legislation

Under the Ethics in Government Act, federal judges are required to make annual financial disclosures similar to those made by Members of Congress, senior government officials, and certain Congressional staff. There have been longstanding security concerns related to federal judges being targeted by those who appear before them. Federal judges were assassinated in 1979, 1988, and 1989 and the spouse and mother of a federal judge were killed in 2005 by a disgruntled medical malpractice litigant. Individuals targeting judges for harassment have also been known to file false liens on property owned by judges and their families. Harassers could use judicial financial disclosure reports to more easily identify such property.

In 1998, authority was given to the Judicial Conference to redact for the following three years, at the request of individual judges, portions of their financial disclosure information that could be used to target judges where an actual threat exists.¹ An example of this would be a home address or the address of a vacation home, but not the name of the company holding the mortgage on that property. A judge who seeks redaction must request it from a committee of the Judicial Conference which then determines whether or not the request is warranted based upon input from the U.S. Marshals Service.

This judge-only redaction authority was then extended to 2005 by P.L. 107–126. To respond to threats against family members, P.L. 110–24 extended the scope of the redaction authority to cover the information of immediate family members. Under the expanded redaction authority, information that could potentially be used by someone seeking to harm a judge’s family, such as the work location of a spouse or child of a judge with active threats on their life, could also now be redacted. The same legislation also extended the authority until 2009. Under broader court security legislation enacted later in 2008, redaction authority was further extended until 2011.²

Finally in 2011, P.L. 112–84 extended redaction authority to December 31, 2017. The 2011 bill was reported out of the House Judiciary Committee by a voice vote and it passed on the House floor by a vote of 384–0. Previous reauthorizations have similarly been uncontroversial with the only issue being how long should the extension be and/or should it simply be permanent. Although the House has consistently supported permanent reauthorization, H.R. 3229 extends the existing redaction authority for ten years until December 31, 2027, due to previous opposition to a permanent reauthorization by the Senate.

¹P.L. 105–318.

²P.L. 110–177.

Hearings

The Committee on the Judiciary held no hearings on H.R. 3229.

Committee Consideration

On September 7, 2017, the Committee met in open session and ordered the bill H.R. 3229 favorably reported without amendment, by voice vote, a quorum being present.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee's consideration of H.R. 3229.

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Congressional Budget Office Cost Estimate

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 3229 the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 18, 2017.

Hon. BOB GOODLATTE, Chairman,
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3229, a bill to protect the safety of judges by extending the authority of the Judicial Conference to redact sensitive information contained in their financial disclosure reports, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Janani Shankaran, who can be reached at 226-2860.

Sincerely,

KEITH HALL,
Director.

Enclosure.

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 3229—A bill to protect the safety of judges by extending the authority of the Judicial Conference to redact sensitive information contained in their financial disclosure reports, and for other purposes.

As ordered reported by the House Committee on the Judiciary on
September 7, 2017.

The Ethics in Government Act of 1978 requires certain government officials to file public disclosures of their financial and employment history. H.R. 3229 would extend through 2027 the authority of the Judicial Conference to redact sensitive information contained in financial disclosure reports of judicial officers and employees if the Judicial Conference determines that such disclosure could endanger the individual. Under current law, that authority expires on December 31, 2017.

Based on information from the Administrative Office of the United States Courts regarding the number of requests to redact sensitive information, CBO estimates that implementing H.R. 3229 would have no significant effect on the federal budget. Enacting H.R. 3229 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 3229 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 3229 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.

On August 16, 2017, CBO transmitted a cost estimate for S. 1584 as ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on July 26, 2017. The bills are similar, and CBO's estimates of the budgetary effects are the same.

The CBO staff contact for this estimate is Janani Shankaran. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

Duplication of Federal Programs

No provision of H.R. 3229 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

The Committee estimates that H.R. 3229 specifically directs to be completed no specific rule makings within the meaning of 5 U.S.C. 551.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 3229, extends the existing judicial redaction authority for an additional ten years.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 3229 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

Section-by-Section Analysis

The following discussion describes the bill as reported by the Committee.

Section 1. Section 1 amends Section 105(b)(3) of the Ethics in Government Act of 1978, found at 5 U.S.C. App., by striking the existing expiration year of 2017 and replacing it with 2027, thereby extending the existing judicial redaction authority until December 31, 2027.



THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

AGENCY VIEWS

JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

JAMES C. DUFF
Secretary

July 20, 2017

Honorable Bob Goodlatte
Chairman
Committee on Judiciary
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I write on behalf of the Judicial Conference of the United States to express strong support for H.R. 3229 and urge the Committee to advance the bill as soon as possible. H.R. 3229, introduced by Representative Hakeem Jeffries, Representative Darrell Issa, and Representative John Conyers, Jr., would extend the authority of the Judicial Conference to redact certain information contained in financial disclosure reports that could affect the physical security of a filer or the filer's family. The authority for such redaction expires at the end of this calendar year and needs to be extended.

Redaction authority applies to judges and certain judicial employees who are required to file financial disclosure reports under the Ethics in Government Act of 1978, as amended. Unfortunately, because of the nature of the judicial function, judges and judicial employees have been the subject of threats, harassment, and violence. Accordingly, Section 105 of the Ethics in Government Act (5 U.S.C. app. § 105 (b)(3)(A)-(E)) grants the Judiciary the authority to redact certain limited information from financial disclosure reports when the release of such information could endanger a judge or judicial employee or a member of their family.¹ Congress has extended the authority to redact five times, most recently on January 3, 2012, which extended the sunset provision through December 31, 2017.

The need to extend redaction authority is a time-sensitive security matter. Failure to extend this authority will create severe security risks to judges and judiciary employees. Federal judges and judiciary employees, like probation officers, routinely interact with disgruntled litigants and convicted criminals who may bear grudges against them. For example, according to the United States Marshals Service, in FY 2017 there has been an increase in every major recorded statistical category regarding inappropriate communications, threats, and security-related incidents requiring an assessment and/or investigation in order to mitigate potential risk, when compared to FY 2016. Without an extension, those individuals who mean to do harm will be able to learn sensitive information

¹ This authority originally was granted to the Judicial Conference by the Identity Theft and Assumption Deterrence Act of 1998 (Pub. L. No. 105-318).

Honorable Bob Goodlatte
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that could reveal the unsecured locations of judges and employees' families. Redaction of this sensitive information protects these public servants and their families from potential danger.

The Judicial Conference uses its redaction authority carefully and reasonably. Under the regulations that the Judicial Conference issued in accordance with the Ethics in Government Act, there must be a clear nexus between a security risk and the information for which redaction is sought before redaction will be permitted. Requests to redact information from financial disclosure reports are made to the Committee on Financial Disclosure, which interprets strictly its redaction authority to conform with the need for public disclosure. In fact, each year only a very small percentage of the financial disclosure reports filed contain an approved redaction of some information in the report. Over the past five years, an average of only 2.7 percent of reports contained an approved redaction of some information.

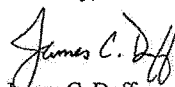
The Government Accountability Office conducted a review of the Judiciary's use of its redaction authority in 2004. Its conclusion was that the Judiciary's exercise of its redaction authority provides a measure of security to at-risk individuals while not substantially interfering with dissemination of information to the public.

While the Judicial Conference prefers making the redaction provisions permanent, it also supports the ten-year sunset provision provided in H.R. 3229.

H.R. 3229 is bi-partisan, non-controversial legislation. In 2011, the last time the authority was up for renewal, reauthorization legislation was reported by the Judiciary Committee on a voice vote and passed the House by a vote of 384-0. We urge the Committee to act on this stand-alone legislation expeditiously to ensure that there is no lapse in the Judiciary's ability to protect itself.

If we may be of further assistance to you, please contact me or the Office of Legislative Affairs, Administrative Office of the United States Courts, at (202) 502-1700.

Sincerely,



James C. Duff
Secretary

cc: Honorable Darrell Issa

Identical letter sent to: Honorable John Conyers, Jr.

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 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

ETHICS IN GOVERNMENT ACT OF 1978

* * * * *

**TITLE I—FINANCIAL DISCLOSURE REQUIREMENTS OF
FEDERAL PERSONNEL**

* * * * *

CUSTODY OF AND PUBLIC ACCESS TO REPORTS

SEC. 105. (a) Each agency, each supervising ethics office in the executive or judicial branch, the Clerk of the House of Representatives, and the Secretary of the Senate shall make available to the public, in accordance with subsection (b), each report filed under this title with such agency or office or with the Clerk or the Secretary of the Senate, except that—

(1) this section does not require public availability of a report filed by any individual in the Office of the Director of National Intelligence, the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, or the National Security Agency, or any individual engaged in intelligence activities in any agency of the United States, if the President finds or has found that, due to the nature of the office or position occupied by such individual, public disclosure of such report would, be revealing the identity of the individual or other sensitive information, compromise the national interest of the United States; and such individuals may be authorized, notwithstanding section 104(a), to file such additional reports as are necessary to protect their identity from public disclosure if the President first finds or has found that such filing is necessary in the national interest; and

(2) any report filed by an independent counsel whose identity has not been disclosed by the division of the court under chapter 40 of title 28, United States Code, and any report filed by any person appointed by that independent counsel under such chapter, shall not be made available to the public under this title.

(b)(1) Except as provided in the second sentence of this subsection, each agency, each supervising ethics office in the executive or judicial branch, the Clerk of the House of Representatives, and the Secretary of the Senate shall, within thirty days after any report is received under this title by such agency or office or by the Clerk or the Secretary of the Senate, as the case may be, permit inspection of such report by or furnish a copy of such report to any person requesting such inspection or copy. With respect to any report required to be filed by May 15 of any year, such report shall be made available for public inspection within 30 calendar days after May 15 of such year or within 30 days of the date of filing

of such a report for which an extension is granted pursuant to section 101(g). The agency, office, Clerk, or Secretary of the Senate, as the case may be may require a reasonable fee to be paid in any amount which is found necessary to recover the cost of reproduction or mailing of such report excluding any salary of any employee involved in such reproduction or mailing. A copy of such report may be furnished without charge or at a reduced charge if it is determined that waiver or reduction of the fee is in the public interest.

(2) Notwithstanding paragraph (1), a report may not be made available under this section to any person nor may any copy thereof be provided under this section to any person except upon a written application by such person stating—

(A) that person's name, occupation and address;

(B) the name and address of any other person or organization on whose behalf the inspection or copy is requested; and

(C) that such person is aware of the prohibitions on the obtaining or use of the report.

Any such application shall be made available to the public throughout the period during which the report is made available to the public.

(3)(A) This section does not require the immediate and unconditional availability of reports filed by an individual described in section 109(8) or 109(10) of this Act if a finding is made by the Judicial Conference, in consultation with United States Marshals Service, that revealing personal and sensitive information could endanger that individual or a family member of that individual.

(B) A report may be redacted pursuant to this paragraph only—

(i) to the extent necessary to protect the individual who filed the report or a family member of that individual; and

(ii) for as long as the danger to such individual exists.

(C) The Administrative Office of the United States Courts shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate and the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Oversight and Government Reform an annual report with respect to the operation of this paragraph including—

(i) the total number of reports redacted pursuant to this paragraph;

(ii) the total number of individuals whose reports have been redacted pursuant to this paragraph;

(iii) the types of threats against individuals whose reports are redacted, if appropriate;

(iv) the nature or type of information redacted;

(v) what steps or procedures are in place to ensure that sufficient information is available to litigants to determine if there is a conflict of interest;

(vi) principles used to guide implementation of redaction authority; and

(vii) any public complaints received relating to redaction.

(D) The Judicial Conference, in consultation with the Department of Justice, shall issue regulations setting forth the circumstances under which redaction is appropriate under this paragraph and the procedures for redaction.

(E) This paragraph shall expire on December 31, ~~2017~~ 2027, and apply to filings through calendar year ~~2017~~ 2027.

(c)(1) It shall be unlawful for any person to obtain or use a report—

(A) for any unlawful purpose;

(B) for any commercial purpose, other than by news and communications media for dissemination to the general public;

(C) for determining or establishing the credit rating of any individual; or

(D) for use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

(2) The Attorney General may bring a civil action against any person who obtains or uses a report for any purpose prohibited in paragraph (1) of this subsection. The court in which such action is brought may assess against such person a penalty in any amount not to exceed \$10,000. Such remedy shall be in addition to any other remedy available under statutory or common law.

(d)(1) Any report filed with or transmitted to an agency or supervising ethics office or to the Clerk of the House of Representatives or the Secretary of the Senate pursuant to this title shall be retained by such agency or office or by the Clerk of the House of Representatives or the Secretary of the Senate, as the case may be.

(2) Such report shall be made available to the public—

(A) in the case of a Member of Congress until a date that is 6 years from the date the individual ceases to be a Member of Congress; and

(B) in the case of all other reports filed pursuant to this title, for a period of 6 years after receipt of the report.

(3) After the relevant time period identified under paragraph (2), the report shall be destroyed unless needed in an ongoing investigation, except that in the case of an individual who filed the report pursuant to section 101(b) and was not subsequently confirmed by the Senate, or who filed the report pursuant to section 101(c) and was not subsequently elected, such reports shall be destroyed 1 year after the individual either is no longer under consideration by the Senate or is no longer a candidate for nomination or election to the Office of President, Vice President, or as a Member of Congress, unless needed in an ongoing investigation or inquiry.

* * * * *