



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

October 16, 2007
(House)

STATEMENT OF ADMINISTRATION POLICY

H.R. 2102 – Providing conditions for the Federally compelled disclosure of information by certain persons connected with the news media

(Rep. Boucher (D) Virginia and 71 cosponsors)

The Administration believes strongly in the importance and rights of a free press; however, based on the overriding imperative to protect national security, the Administration strongly opposes H.R. 2102. The bill would provide a broad privilege to a large class of “covered persons” that could severely frustrate – and in some cases completely eviscerate – the Federal government’s ability to investigate acts of terrorism and other threats to national security. Accordingly, if H.R. 2102 were presented to the President in its current form, his senior advisors would recommend that he veto the bill.

The Administration believes that H.R. 2102 would create a dramatic shift in the law that would produce immediate harm to national security and law enforcement. The legislation would make it extremely difficult to prosecute cases involving leaks of classified information and would hamper efforts to investigate and prosecute other serious crimes. The bill would impose an unreasonable and unjustified evidentiary burden on prosecutors seeking to issue a subpoena to a member of the news media, placing authorities in an untenable position. In order to satisfy the bill’s requirements, prosecutors essentially must prove the existence of specific criminal activity – in a hearing before a judge, with notice to the subjects of the investigation – before they have been able to undertake the necessary investigative steps to determine whether a crime has occurred. Thus, in many cases, prosecutors will have to conduct a mini-trial before their investigation has concluded and, in some cases, even before their investigation has gotten off the ground.

Because of the heavy evidentiary burden that the bill would require, it is likely that the legislation will encourage more leaks of classified information by giving leakers such a formidable shield behind which they can hide. Moreover, the bill will discourage investigations and prosecutions of such leaks because, by imposing such an unacceptably high evidentiary burden, the bill virtually requires the Government to disclose additional sensitive information in order to pursue a leaker of classified information.

Efforts to safeguard national security and bring to justice those who have breached it must not be subjected to such unreasonable burdens and standards.

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