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110TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPORT 110–59

JUDICIAL DISCLOSURE RESPONSIBILITY ACT

MARCH 20, 2007.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 1130]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1130) to amend the Ethics in Government Act of 1978 to extend the authority to withhold from public availability a financial disclosure report filed by an individual who is a judicial officer or judicial employee, to the extent necessary to protect the safety of that individual or a family member of that individual, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

CONTENTS

	Page
Purpose and Summary	2
Background and Need for the Legislation	2
Committee Consideration	4
Committee Votes	4
Committee Oversight Findings	4
New Budget Authority and Tax Expenditures	4
Congressional Budget Office Cost Estimate	4
Performance Goals and Objectives	5
Constitutional Authority Statement	5
Advisory on Earmarks	5
Section-by-Section Analysis	5
Changes in Existing Law Made by the Bill, as Reported	6
Judiciary Conference Views	7
Additional Views	11

59–006

PURPOSE AND SUMMARY

H.R. 1130 would revive and extend until December 31, 2009 a provision permitting the Judicial Conference to redact from financial disclosure reports selected information that could reveal residences and other unsecured locations frequented by a judge or judicial employee, thereby exposing them to being targeted for physical harm. The bill would also add safety of family members to the ambit of concern warranting redaction.

BACKGROUND AND NEED FOR THE LEGISLATION

In response to the constitutional issues surrounding the Watergate crisis and the resignation of President Richard M. Nixon, the Ethics in Government Act was passed in 1978 to promote ethics and openness in government. Generally, the act established a certain rule of conduct for Federal employees to reduce corruption and prevent the improper use of knowledge gained while employed by the government, and more broadly to prevent the appearance of impropriety.

The Ethics in Government Act of 1978 applies to all branches of government from the President, Vice President, and all GS-16 or above employees, Members of Congress and certain congressional employees, and Federal judges and certain employees of the judiciary. Specifically, those covered by the Act are required to disclose personal and financial information each year, including the source and amount of income, other than that earned as employees of the United States government, received during the preceding calendar year. They must also disclose the source, description, and value of gifts for which the aggregate value is more than a certain minimal amount, received from any source other than a relative; the source and description of reimbursements; the identity and category of value of property interests; the identity and category value of liabilities owed to creditors other than certain immediate family members; and other financial information. Under the Act, these reports are made public.

Examples of sensitive personal information that can be disclosed in these reports include:

Residence—Unsecured location may be disclosed by the listing of position as a condominium officer.

Spouse's workplace—Unsecured location may be disclosed by source of spouse's income.

Child's school—Unsecured location may be disclosed by name of school listed as a creditor for tuition.

Vacation home—Unsecured location may be disclosed by listing of property occasionally rented to others.

In 1998, Congress recognized the potential for these disclosures to place individual judges at risk, and responded with legislation adding a new subsection to the Ethics in Government Act authorizing the Judicial Branch to redact information from financial disclosure reports under certain circumstances. Under that subsection, a report may be redacted "(i) to the extent necessary to protect the individual who filed the report; and (ii) for as long as the danger to such individual exists." The Act further charged the U.S. Judicial Conference, in consultation with the Department of Justice,

with the task of submitting to the House and Senate Committees on the Judiciary an annual report documenting redactions.

When originally passed, the provision contained a sunset clause whereby it would expire in December 2001, unless extended by Congress. In 2001, after the House of Representatives approved a bill striking the sunset clause and making the redaction authority permanent, the Senate Governmental Affairs Committee ("GAC") considered whether to make the authority permanent. GAC members raised several concerns about the bill, including the use of redaction authority to avoid revealing stock holdings and other financial assets. Additionally, GAC observed that complete withholding of financial disclosure had sometimes occurred, noting that such withholding seemed contrary to the intent of the statute. Ultimately, GAC recommended extending the redaction authority for four more years, until December 31, 2005. This extension would effectively allow for a more in-depth investigation of areas of concern before Congress decided whether to ultimately make the authority permanent. The extension was passed, and the authority expired in December 2005.

This legislation preserves an important means of protecting the safety of those who work in the Federal Judicial Branch. In a June 2000 address to the American Law Institute Annual Meeting, the late Chief Justice Rehnquist cited several examples of trial judges who were targets of violence and specifically referred to three judges who had been murdered at their homes.

- In 1979, U.S. District Court Judge John Wood Jr. was fatally shot outside of his home by assassin Charles Harrelson. The murder contract had been placed by Texas drug lord Jamiel Chagra, who was awaiting trial before the judge.
- In 1988, U.S. District Court Judge Richard Daronco was murdered at his house by Charles Koster, the father of the unsuccessful plaintiff in a discrimination case.
- In 1989, U.S. Circuit Court Judge Richard Vance was killed by a letter bomb sent to his home. The letterbomb was attributed to racist animus against Judge Vance for writing an opinion reversing a lower-court ruling to lift an 18-year desegregation order from the Duval County, Florida schools.

More recently, the tragic murders of U.S. District Court Judge Joan Humphrey Lefkow's husband and mother have raised even more concerns about safety of the judiciary.[1]

In its report to the Committee on Homeland Security and Governmental Affairs, the Judicial Conference reported that of the 3,942 Federal judges and judiciary employees required to file financial disclosure reports in 2004, 177 reports were partially redacted before release. In four instances, the approved redaction requests were based on specific threats such as high-threat trials, ongoing protective investigations, identity theft, and continuing threats from criminal defendants and disgruntled civil litigants. In 137 instances, the approved redaction requests were based on general threats and involved redacting a family member's unsecured place

[1] Dennis Cauchon, *Previously threatened, judge discovers her family slain,* USA Today, Mar. 3, 2005, at A1. Threats were previously made on Judge Lefkow's life. In April 2004, Mathew Hale was convicted of conspiring to have his bodyguard kill Judge Lefkow in retaliation for rules she made against him in a copyright case involving the name of his group.

of work, an unsecured location frequented by a judge, or the residence of a judge, judicial employee, or family member.

COMMITTEE CONSIDERATION

On February 28, 2007, the Committee met in open session and ordered the bill H.R. 1130 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. 1130.

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. 1130, 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, March 8, 2007.

Hon. JOHN CONYERS, Jr., *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. 1130, the Judicial Disclosure Responsibility Act.

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

Sincerely,

PETER R. ORSZAG,
DIRECTOR.

Enclosure

cc: Honorable Lamar S. Smith.
Ranking Member

H.R. 1130—Judicial Disclosure Responsibility Act.

CBO estimates that enacting H.R. 1130 would have no significant impact on the Federal budget. H.R. 1130 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.

H.R. 1130 would renew provisions of the Ethics in Government Act of 1978 involving the financial disclosure requirements for judges. The bill would prevent public disclosure of certain information if it is determined that such disclosure could endanger the individual. Those provisions (which expired in 2005) would be extended through 2009. The bill also would expand those protections to include information that could endanger a family member. Under the bill, the Administrative Office of the United States Courts (AOUSC) would be required to submit an annual report to the Congress specifying how often this authority is exercised and in what manner. Based on information from AOUSC, CBO estimates that implementing those provisions would have no significant impact on the Federal budget. Enacting the bill would not affect direct spending or revenues.

The CBO staff contact for this estimate is Daniel Hoople, who can be reached at 226–2860. This estimate was approved by Robert A. Sunshine, Assistant Director for Budget Analysis.

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. 1130 will assist in the protection of judicial officers and judicial employees and a family members of that judicial employee.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article 1, section 8 of the Constitution.

ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 1130 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

SECTION-BY-SECTION ANALYSIS

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

Sec. 1. Short title. This section sets forth the short title of the bill as the "Judicial Disclosure Responsibility Act."

Sec. 2. Protection of Family Members. This section amends the Ethic in Government Act of 1978 to include family members of the individual covered by the Act.

Sec. 3. Financial Disclosure Reports. This section would extend the Judicial Conference authority to redact to 2009. The section would also require that the report to Congress include 1) the nature or type of information redacted; 2) what steps are in place to

ensure that sufficient information is available to litigants to determine if there is a conflict of interest; 3) principles used to guide the implementation of the redaction authority; and 4) public complaints received relating to any redactions.

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 italics, 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) * * *

(b)(1) * * *

* * * * * * *

(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 Marshall 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

* * * * * * *

(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 an annual report with respect to the operation of this paragraph including—

(i) * * *

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

(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.

* * * * * * *

(E) This paragraph shall expire on December 31, [2005] *2009*, and apply to filings through calendar year [2005] *2009*.

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JUDICIAL CONFERENCE VIEWS

JUDICIAL CONFERENCE OF THE UNITED STATES
COMMITTEE ON FINANCIAL DISCLOSURE

Judge Ortrie D. Smith, Chair

Judge Bobby R. Baldock
Judge Stanley F. Birch, Jr.
Judge Catherine C. Blake
Judge John W. Darrah
Judge Eldon E. Fallon
Judge Jeremy D. Fogel
Judge Emily C. Hewitt
Judge Gary R. Jones
Judge Yvette Kane
Judge Joseph H. McKinley, Jr.
Judge Norman K. Moon
Judge Linda R. Reade
Judge Robert D. Sack
Judge William E. Smith
Judge William T. Thurman

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February 7, 2007

Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
United States House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

As Chairman of the Judicial Conference Committee on Financial Disclosure, I feel compelled to make you aware of a disturbing development that demonstrates the increased urgency for Congress to restore the authority of the Conference to redact sensitive information from the financial disclosure reports of judges and court employees.

The Committee on Financial Disclosure recently received a request for the financial disclosure report of a probation officer from a prisoner who had been convicted of a crime of violence (arson and fraud) involving the death of a co-conspirator. As required, the probation officer's financial disclosure report includes his wife's employer, a local public facility which is an unsecured location. The probation officer is aware that the Judicial Conference authority to redact this information has expired, but he has inquired whether the Congress will act to restore that authority before his report must be released to the prisoner. This particular prisoner has, apparently, demonstrated a willingness to use personal information maliciously. The probation officer advises that the requestor also filed a false form 1099 with the IRS, alleging that the Assistant United States Attorney in his case sold stock for a substantial profit.

This situation illustrates the threat to the personal security of judges and court staff that can arise from an unforeseen change in circumstances. Without the authority to redact sensitive information in circumstances like these, the Judicial Conference is

required to provide an unredacted copy of the report to the requestor, placing in jeopardy the personal security of this employee's wife.

We understand that court security legislation has been introduced in both the House and the Senate that would reinstate the judiciary's authority to redact information from financial disclosure reports for security reasons. We urge action on this measure with all deliberate speed. We appreciate your consideration of this important matter.

Sincerely,

Ortrie Smith
Chair

Identical letter sent to: Honorable Lamar Smith
Honorable Howard Berman
Honorable Howard Coble
Honorable Robert Scott
Honorable Randy Forbes

JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JAMES C. DUFF
Secretary

November 22, 2006

Honorable F. James Sensenbrenner, Jr.
Chairman
Committee on the Judiciary
United States House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

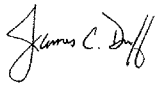
I write to thank you for your support for legislation to extend the authority of the Judicial Conference to redact judges' financial disclosure reports in situations where the release of certain information could endanger them or their families. I ask you now to renew your efforts to pass legislation extending this authority. The urgent need for personal security of federal judges warrants the expediting of such legislation before the adjournment of the 109th Congress.

In order to provide some measure of security to judges after the expiration of the authority, the Judicial Conference has allowed previously approved redactions to continue. Fortunately, there have not yet been new incidents involving threats to the security of federal judges since that date. The filing of reports covering calendar year 2006 will soon begin, however, and to avoid the possibility of the Judicial Conference having to release any reports filed for 2006 without the previously available review for sensitive information, we strongly urge Congress to act before adjournment.

We appreciate the support for federal judges that you have already shown regarding this matter. We ask for your renewed effort to restore this security measure that is of such vital importance to the personal safety of all federal judges. If I can assist in securing enactment of this legislation, please do not hesitate to contact me. I may be

reached at (202) 502-3000. Your staff may also contact Cordia A. Strom, Assistant Director for Legislative Affairs, at (202) 502-1700.

Sincerely,



James C. Duff
Director

Identical letter sent to: Honorable John Conyers, Jr.
Honorable Arlen Specter
Honorable Patrick J. Leahy

ADDITIONAL VIEWS

H.R. 1130, the Judicial Disclosure Responsibility Act of 2007, amends the Ethics in Government Act of 1978 to restrict disclosure of personal information about family members of judges, and it provides for a four-year extension of the authority of the Judicial Conference to redact certain personal information of judges from financial disclosure reports.

At the February 28, 2007, markup on this legislation, I offered an amendment to make a simple and straight-forward change to H.R. 1130. The Judicial Disclosure Responsibility Act contains a four-year extension of redaction authority. My amendment provides for a permanent extension to this authority.

Nearly every Member on this Committee is on record as supporting a permanent extension. In the 109th Congress, H.R. 1751, the Court Security Improvement Act, contained the permanent extension and it passed the House by a vote of 375–45. All but a handful of Members on the House Judiciary Committee voted in favor of the Court Security Improvement Act. I would dare say that none of the five current Committee Members who opposed that legislation did so because it would have permanently extended the authority which allows the Judicial Conference to redact statutorily required information in a financial disclosure report where the release of that information could endanger the filer or his or her family.

Since the Senate failed to consider the Court Security Improvement Act, I introduced this crucial judicial security measure as a stand-alone bill which passed the House by voice vote. During debate on that bill a number of my friends on the other side of the aisle spoke favorably about what a great bill it was.

Although I am disappointed that my amendment was not adopted during markup, I am encouraged that Chairman Conyers noted we would attempt to make the protections permanent when considering court security legislation later this year.

During my tenure as Chairman of this Committee, I did battle with the other body on many occasions. Several times we reported legislation out of this Committee that passed the House with little or no dissent, only to see those bills die. I must warn my good friend, Chairman Conyers, to be careful when depending on "pretty good assurances" from the other body.

Making redaction authority permanent is the right thing to do. Members of this Committee can, in Chairman Conyers words, "trust me," that I will continue to push for making this authority permanent when we consider a court security bill later this year.

F. JAMES SENSENBRENNER, JR.

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