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(Original Signature of Member)

115TH CONGRESS
1ST SESSION

H. R. _____

To amend the Revised Statutes of the United States and title 28, United States Code, to enhance compliance with requests for information pursuant to legislative power under Article I of the Constitution, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M____. _____ introduced the following bill; which was referred to the
Committee on _____

A BILL

To amend the Revised Statutes of the United States and title 28, United States Code, to enhance compliance with requests for information pursuant to legislative power under Article I of the Constitution, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Congressional Sub-
5 poena Compliance and Enforcement Act of 2017”.

1 **SEC. 2. ENFORCEMENT OF CONGRESSIONAL SUBPOENAS.**

2 (a) IN GENERAL.—Chapter 85 of title 28, United
3 States Code, is amended by inserting after section 1365
4 the following:

5 **“§ 1365a. Congressional actions against subpoena re-**
6 **ipients**

7 “(a) CIVIL ACTION.—

8 “(1) SPECIAL RULES.—In any civil action
9 brought by the United States House of Representa-
10 tives, the United States Senate, or a committee or
11 subcommittee thereof, against the recipient of a sub-
12 poena to secure declaratory, injunctive, or other re-
13 lief as may be appropriate concerning the failure to
14 comply with a subpoena issued by a congressional
15 committee or subcommittee, the following rules shall
16 apply:

17 “(A) The action shall be filed in a United
18 States district court of competent jurisdiction.

19 “(B) It shall be the duty of the United
20 States district courts, the United States courts
21 of appeal, and the Supreme Court of the United
22 States to advance on the docket and to expedite
23 to the greatest possible extent the disposition of
24 any such action and appeal.

25 “(C) If a three-judge court is expressly re-
26 quested by the plaintiff in the initial pleading,

1 the action shall be heard by a three-judge court
2 convened pursuant to section 2284 of title 28,
3 United States Code, and shall be reviewable
4 only by appeal directly to the Supreme Court of
5 the United States. Such appeal shall be taken
6 by the filing of a notice of appeal within 10
7 days, and the filing of a jurisdictional statement
8 within 30 days, of the entry of the final deci-
9 sion.

10 “(2) MONETARY PENALTIES IN CASES INVOLV-
11 ING GOVERNMENT AGENCIES.—

12 “(A) The court may impose monetary pen-
13 alties directly against the head of a government
14 agency or a component thereof held to have
15 willfully failed to comply with any part of a con-
16 gressional subpoena.

17 “(B) Limitation on Appropriations. No ap-
18 propriated funds, funds provided from any ac-
19 counts in the Treasury, or funds derived from
20 the collection of fees shall be used to pay any
21 monetary penalty imposed by the court pursu-
22 ant to this section.

23 “(3) WAIVER OF PRIVILEGE.—Any assertion of
24 a privilege or other ground for noncompliance
25 (whether statutory, common law, or otherwise) as-

1 serted by the recipient of a congressional subpoena
2 may be determined to have been waived as to any
3 particular record withheld from production if the
4 court finds that the recipient failed in a timely man-
5 ner to comply with the requirement of section 105
6 of the Revised Statutes of the United States that it
7 produce a privilege log with respect to such record.

8 “(4) NON-CONSTITUTIONAL PRIVILEGES AS-
9 SERTED BY GOVERNMENT AGENCIES.—The court
10 shall not give effect to any assertion by an officer or
11 employee of a government agency acting within his
12 or her official capacity of a non-constitutional legal
13 basis for withholding documents or other materials
14 of any kind, for refusing to answer any deposition
15 or interrogatory, or for refusing to provide testi-
16 mony, unless and only to the extent that the con-
17 gressional committee or subcommittee has deter-
18 mined, in its sole and unreviewable discretion, to
19 recognize the assertion as valid.

20 “(5) DEFINITION.—For purposes of this sec-
21 tion, the term ‘government agency’ means an execu-
22 tive department listed in section 101 of title 5,
23 United States Code, an independent establishment,
24 commission, board, bureau, division, or office in the
25 executive branch, or other agency of the Federal

1 Government, including wholly or partly owned Gov-
2 ernment corporations.”.

3 (b) CLERICAL AMENDMENT.—The table of sections
4 for chapter 85 of title 28, United States Code, is amended
5 by inserting after the item relating to section 1365 the
6 following:

“1365a. Congressional actions against subpoena recipients.”.

7 **SEC. 3. COMPLIANCE WITH CONGRESSIONAL SUBPOENAS.**

8 (a) IN GENERAL.—Chapter seven of title II of the
9 Revised Statutes of the United States (2 U.S.C. 191 et
10 seq.) is amended by adding at the end the following:

11 **“SEC. 105. RESPONSE TO CONGRESSIONAL SUBPOENAS.**

12 “(a) SUBPOENA BY CONGRESSIONAL COMMITTEE.—
13 Any recipient of any subpoena from a congressional com-
14 mittee or subcommittee shall appear and testify or
15 produce records in a manner consistent with the subpoena
16 and this section.

17 “(b) CONGRESSIONAL SUBPOENAS FOR RECORDS.—

18 “(1) IDENTIFICATION OF RECORDS WITH-
19 HELD.—In the case of a record that is withheld, in
20 whole or in part, by the subpoena recipient, the sub-
21 poena recipient shall provide a log containing the
22 following information concerning such record:

23 “(A) An express assertion and description
24 of the legal basis asserted for withholding the
25 record.

1 “(B) The type of record.

2 “(C) The general subject matter.

3 “(D) The date, author, and addressee.

4 “(E) The relationship of the author and
5 addressee to each other.

6 “(F) The custodian of the record.

7 “(G) Any other descriptive information
8 that may be produced or disclosed regarding
9 the record that will enable the congressional
10 committee or subcommittee issuing the sub-
11 poena to assess the legal basis asserted for
12 withholding the record.

13 “(2) MISSING RECORDS.—In the case of any
14 record responsive to the subpoena submitted under
15 paragraph (1) that was, but no longer is, in the pos-
16 session, custody, or control of the subpoena recipi-
17 ent, the subpoena recipient shall identify the record
18 (including the date, author, subject, and each recipi-
19 ent of the record) and explain the circumstances
20 under which the record ceased to be in the posses-
21 sion, custody, or control of the subpoena recipient.

22 “(3) ELECTRONIC RECORDS.—Electronic
23 records shall be produced pursuant to this sub-
24 section in their native or original file format. Elec-
25 tronic records shall be delivered on a storage device

1 (such as compact disk, memory stick, or thumb
2 drive) and, to the extent feasible, shall be organized,
3 identified, and indexed electronically and shall in-
4 clude an index describing the contents of the produc-
5 tion.

6 “(b) DEFINITIONS.—For purposes of this section the
7 term ‘record’ includes any books, papers, documents, data,
8 or other objects requested in a subpoena issued by a con-
9 gressional committee or subcommittee.”.

10 (b) CLERICAL AMENDMENT.—The table of contents
11 for chapter 7 of title II of the Revised Statutes of the
12 United States is amended by adding at the end the fol-
13 lowing:

“Sec. 105. Response to congressional subpoenas.”.

14 **SEC. 4. RULE OF CONSTRUCTION.**

15 Nothing in this Act shall be interpreted to diminish
16 Congress’s inherent authority or previously established
17 methods and practices for enforcing compliance with con-
18 gressional subpoenas, nor shall anything in this Act be in-
19 terpreted to establish Congress’s acceptance of any privi-
20 lege or other legal basis for noncompliance with a congres-
21 sional subpoena.