

Manager's Substitute Amendment

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—117th Cong., 1st Sess.**S. 2129**

To promote freedom of information and counter censorship and surveillance in North Korea, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. PORTMAN

Viz:

1 Strike all after the enacting clause and insert the following:
2

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Otto Warmbier Countering North Korean Censorship and Surveillance Act of
5
6 2021”.

7 **SEC. 2. FINDINGS; SENSE OF CONGRESS.**

8 (a) FINDINGS.—Congress makes the following findings:
9

10 (1) The information landscape in North Korea
11 is the most repressive in the world, consistently

1 ranking last or near-last in the annual World Press
2 Freedom Index.

3 (2) Under the brutal rule of Kim Jung Un, the
4 country's leader since 2012, the North Korean re-
5 gime has tightened controls on access to informa-
6 tion, as well as enacted harsh punishments for con-
7 sumers of outside media, including sentencing to
8 time in a concentration camp and a maximum pen-
9 alty of death.

10 (3) Such repressive and unjust laws sur-
11 rounding information in North Korea resulted in the
12 death of 22-year-old United States citizen and uni-
13 versity student Otto Warmbier, who had traveled to
14 North Korea in December 2015 as part of a guided
15 tour.

16 (4) Otto Warmbier was unjustly arrested, sen-
17 tenced to 15 years of hard labor, and severely mis-
18 treated at the hands of North Korean officials.
19 While in captivity, Otto Warmbier suffered a serious
20 medical emergency that placed him into a comatose
21 state. Otto Warmbier was comatose upon his release
22 in June 2017 and died 6 days later.

23 (5) Despite increased penalties for possession
24 and viewership of foreign media, the people of North
25 Korean have increased their desire for foreign media

1 content, according to a survey of 200 defectors con-
2 cluding that 90 percent had watched South Korean
3 or other foreign media before defecting.

4 (6) On March 23, 2021, in an annual resolu-
5 tion, the United Nations General Assembly con-
6 demned “the long-standing and ongoing systematic,
7 widespread and gross violations of human rights in
8 the Democratic People’s Republic of Korea” and ex-
9 pressed grave concern at, among other things, “the
10 denial of the right to freedom of thought, conscience,
11 and religion . . . and of the rights to freedom of
12 opinion, expression, and association, both online and
13 offline, which is enforced through an absolute mo-
14 nopoly on information and total control over orga-
15 nized social life, and arbitrary and unlawful state
16 surveillance that permeates the private lives of all
17 citizens”.

18 (7) In 2018, Typhoon Yutu caused extensive
19 damage to 15 broadcast antennas used by the
20 United States Agency for Global Media in Asia, re-
21 sulting in reduced programming to North Korea.
22 The United States Agency for Global Media has re-
23 built 5 of the 15 antenna systems as of June 2021.

24 (b) SENSE OF CONGRESS.—It is the sense of Con-
25 gress that—

1 (1) in the event of a crisis situation, particu-
2 larly where information pertaining to the crisis is
3 being actively censored or a false narrative is being
4 put forward, the United States should be able to
5 quickly increase its broadcasting capability to deliver
6 fact-based information to audiences, including those
7 in North Korea; and

8 (2) the United States International Broad-
9 casting Surge Capacity Fund is already authorized
10 under section 316 of the United States International
11 Broadcasting Act of 1994 (22 U.S.C. 6216), and ex-
12 panded authority to transfer unobligated balances
13 from expired accounts of the United States Agency
14 for Global Media would enable the Agency to more
15 nimble respond to crises.

16 **SEC. 3. STATEMENT OF POLICY.**

17 It is the policy of the United States—

18 (1) to provide the people of North Korea with
19 access to a diverse range of fact-based information;

20 (2) to develop and implement novel means of
21 communication and information sharing that in-
22 crease opportunities for audiences in North Korea to
23 safely create, access, and share digital and non-dig-
24 ital news without fear of repressive censorship, sur-
25 veillance, or penalties under law; and

1 (3) to foster and innovate new technologies to
2 counter North Korea’s state-sponsored repressive
3 surveillance and censorship by advancing internet
4 freedom tools, technologies, and new approaches.

5 **SEC. 4. UNITED STATES STRATEGY TO COMBAT NORTH KO-**
6 **REA’S REPRESSIVE INFORMATION ENVIRON-**
7 **MENT.**

8 (a) IN GENERAL.—Not later than 180 days after the
9 date of the enactment of this Act, the President shall de-
10 velop and submit to Congress a strategy on combating
11 North Korea’s repressive information environment.

12 (b) ELEMENTS.—The strategy required by subsection
13 (a) shall include the following:

14 (1) An assessment of the challenges to the free
15 flow of information into North Korea created by the
16 censorship and surveillance technology apparatus of
17 the Government of North Korea.

18 (2) A detailed description of the agencies and
19 other government entities, key officials, and security
20 services responsible for the implementation of North
21 Korea’s repressive laws regarding foreign media con-
22 sumption.

23 (3) A detailed description of the agencies and
24 other government entities and key officials of foreign

1 governments that assist, facilitate, or aid North Ko-
2 rea's repressive censorship and surveillance state.

3 (4) A review of existing public-private partner-
4 ships that provide circumvention technology and an
5 assessment of the feasibility and utility of new tools
6 to increase free expression, circumvent censorship,
7 and obstruct repressive surveillance in North Korea.

8 (5) A description of and funding levels required
9 for current United States Government programs and
10 activities to provide access for the people of North
11 Korea to a diverse range of fact-based information.

12 (6) An update of the plan required by section
13 104(a)(7)(A) of the North Korean Human Rights
14 Act of 2004 (22 U.S.C. 7814(a)(7)(A)).

15 (7) A description of Department of State pro-
16 grams and funding levels for programs that promote
17 internet freedom in North Korea, including moni-
18 toring and evaluation efforts.

19 (8) A description of grantee programs of the
20 United States Agency for Global Media in North
21 Korea that facilitate circumvention tools and broad-
22 casting, including monitoring and evaluation efforts.

23 (9) A detailed assessment of how the United
24 States International Broadcasting Surge Capacity
25 Fund authorized under section 316 of the United

1 States International Broadcasting Act of 1994 (22
2 U.S.C. 6216) has operated to respond to crisis situa-
3 tions in the past, and how authority to transfer un-
4 obligated balances from expired accounts would help
5 the United States Agency for Global Media in crisis
6 situations in the future.

7 (10) A detailed plan for how the authorization
8 of appropriations under section 7 will operate along-
9 side and augment existing programming from the
10 relevant Federal agencies and facilitate the develop-
11 ment of new tools to assist that programming.

12 (c) FORM OF STRATEGY.—The strategy required by
13 subsection (a) shall be submitted in unclassified form, but
14 may include the matters required by paragraphs (2) and
15 (3) of subsection (b) in a classified annex.

16 **SEC. 5. IMPOSITION OF SANCTIONS WITH RESPECT TO PER-**
17 **SONS RESPONSIBLE FOR NORTH KOREA'S RE-**
18 **PRESSIVE CENSORSHIP AND SURVEILLANCE**
19 **STATE.**

20 (a) IN GENERAL.—The President may impose the
21 following sanctions with respect to any foreign person that
22 the President determines knowingly engaged in, facili-
23 tated, or was responsible for censorship by the Govern-
24 ment of North Korea or the Workers' Party of Korea iden-
25 tified under paragraph (2) or (3) of section 4(b):

1 (1) BLOCKING OF PROPERTY.—The President
2 may exercise all of the powers granted to the Presi-
3 dent under the International Emergency Economic
4 Powers Act (50 U.S.C. 1701 et seq.) to the extent
5 necessary to block and prohibit all transactions in
6 property and interests in property of the foreign per-
7 son if such property and interests in property are in
8 the United States, come within the United States, or
9 are or come within the possession or control of a
10 United States person.

11 (2) INELIGIBILITY FOR VISAS, ADMISSION, OR
12 PAROLE.—

13 (A) VISAS, ADMISSION, OR PAROLE.—In
14 the case of an alien, the alien may be—

15 (i) inadmissible to the United States;

16 (ii) ineligible to receive a visa or other
17 documentation to enter the United States;

18 and

19 (iii) otherwise ineligible to be admitted
20 or paroled into the United States or to re-
21 ceive any other benefit under the Immigra-
22 tion and Nationality Act (8 U.S.C. 1101 et
23 seq.).

24 (B) CURRENT VISAS REVOKED.—

1 (i) IN GENERAL.—An alien described
2 in subparagraph (A) may be subject to rev-
3 ocation of any visa or other entry docu-
4 mentation regardless of when the visa or
5 other entry documentation is or was
6 issued.

7 (ii) EFFECT.—A revocation under
8 clause (i) shall—

9 (I) take effect consistent with
10 section 221 of the Immigration and
11 Nationality Act (8 U.S.C. 1201); and

12 (II) cancel any other valid visa or
13 entry documentation that is in the
14 alien's possession.

15 (b) IMPLEMENTATION; PENALTIES.—

16 (1) IMPLEMENTATION.—The President may ex-
17 ercise all authorities provided under sections 203
18 and 205 of the International Emergency Economic
19 Powers Act (50 U.S.C. 1702 and 1704) to carry out
20 this section.

21 (2) PENALTIES.—A person that violates, at-
22 tempts to violate, conspires to violate, or causes a
23 violation of subsection (a)(1) or any regulation, li-
24 cense, or order issued to carry out that subsection
25 shall be subject to the penalties set forth in sub-

1 sections (b) and (c) of section 206 of the Inter-
2 national Emergency Economic Powers Act (50
3 U.S.C. 1705) to the same extent as a person that
4 commits an unlawful act described in subsection (a)
5 of that section.

6 (c) NATIONAL SECURITY WAIVER.—The President
7 may waive the imposition of sanctions under subsection
8 (a) with respect to a person if the President—

9 (1) determines that such a waiver is in the na-
10 tional security interests of the United States; and

11 (2) submits to the appropriate congressional
12 committees a notification of the waiver and the rea-
13 sons for the waiver.

14 (d) EXCEPTIONS.—

15 (1) INTELLIGENCE ACTIVITIES.—This section
16 shall not apply with respect to activities subject to
17 the reporting requirements under title V of the Na-
18 tional Security Act of 1947 (50 U.S.C. 3091 et seq.)
19 or any authorized intelligence activities of the United
20 States.

21 (2) LAW ENFORCEMENT ACTIVITIES.—Sanc-
22 tions under this section shall not apply with respect
23 to any authorized law enforcement activities of the
24 United States.

1 (3) EXCEPTION TO COMPLY WITH INTER-
2 NATIONAL AGREEMENTS.—Subsection (a)(2) shall
3 not apply with respect to the admission of an alien
4 to the United States if such admission is necessary
5 to comply with the obligations of the United States
6 under the Agreement regarding the Headquarters of
7 the United Nations, signed at Lake Success June
8 26, 1947, and entered into force November 21,
9 1947, between the United Nations and the United
10 States, under the Convention on Consular Relations,
11 done at Vienna April 24, 1963, and entered into
12 force March 19, 1967, or under other international
13 agreements.

14 (4) EXCEPTION RELATING TO IMPORTATION OF
15 GOODS.—

16 (A) IN GENERAL.—The authority or a re-
17 quirement to impose sanctions under this sec-
18 tion shall not include the authority or a require-
19 ment to impose sanctions on the importation of
20 goods.

21 (B) GOOD DEFINED.—In this paragraph,
22 the term “good” means any article, natural or
23 manmade substance, material, supply, or manu-
24 factured product, including inspection and test
25 equipment, and excluding technical data.

1 (e) DEFINITIONS.—In this section:

2 (1) ADMISSION; ADMITTED; ALIEN.—The terms
3 “admission”, “admitted”, and “alien” have the
4 meanings given those terms in section 101 of the
5 Immigration and Nationality Act (8 U.S.C. 1101).

6 (2) APPROPRIATE CONGRESSIONAL COMMIT-
7 TEES.—The term “appropriate congressional com-
8 mittees” means—

9 (A) the Committee on Foreign Relations,
10 the Committee on Banking, Housing, and
11 Urban Affairs, and the Select Committee on In-
12 telligence of the Senate; and

13 (B) the Committee on Foreign Affairs, the
14 Committee on Financial Services, and the Per-
15 manent Select Committee on Intelligence of the
16 House of Representatives.

17 (3) FOREIGN PERSON.—The term “foreign per-
18 son” means any person that is not a United States
19 person.

20 (4) UNITED STATES PERSON.—The term
21 “United States person” means—

22 (A) a United States citizen or an alien law-
23 fully admitted to the United States for perma-
24 nent residence;

1 (B) an entity organized under the laws of
2 the United States or any jurisdiction within the
3 United States; or

4 (C) any person in the United States.

5 **SEC. 6. REPORT ON ENFORCEMENT OF SANCTIONS WITH**
6 **RESPECT TO NORTH KOREA.**

7 (a) IN GENERAL.—Not later than 180 days after the
8 date of the enactment of this Act, and annually thereafter
9 through 2024, the Secretary of State and the Secretary
10 of the Treasury shall jointly submit to the appropriate
11 congressional committees (as defined in section 5(e)) a re-
12 port on sanctions-related activities and enforcement un-
13 dertaken by the United States Government with respect
14 to North Korea during the period described in subsection

15 (b) that includes—

16 (1) an assessment of activities conducted by
17 persons in North Korea or the Government of North
18 Korea that would require mandatory designations
19 pursuant to the North Korea Sanctions and Policy
20 Enhancement Act of 2016 (22 U.S.C. 9201 et seq.);
21 and

22 (2) sanctions-related enforcement or other sanc-
23 tions-related actions undertaken by the United
24 States Government pursuant to that Act.

1 (b) PERIOD DESCRIBED.—The period described in
2 this subsection is—

3 (1) in the case of the first report required by
4 subsection (a), the period beginning on January 1,
5 2021, and ending on the date on which the report
6 is required to be submitted; and

7 (2) in the case of each subsequent report re-
8 quired by subsection (a), the one-year period pre-
9 ceding submission of the report.

10 **SEC. 7. PROMOTING FREEDOM OF INFORMATION AND**
11 **COUNTERING CENSORSHIP AND SURVEIL-**
12 **LANCE IN NORTH KOREA.**

13 (a) AUTHORIZATION OF APPROPRIATIONS.—There
14 are authorized to be appropriated to the United States
15 Agency for Global Media \$10,000,000 for each of fiscal
16 years 2022 through 2026 to provide increased broad-
17 casting and grants for the following purposes:

18 (1) To promote the development of internet
19 freedom tools, technologies, and new approaches, in-
20 cluding both digital and non-digital means of infor-
21 mation sharing related to North Korea.

22 (2) To explore public-private partnerships to
23 counter North Korea's repressive censorship and
24 surveillance state.

1 (3) To develop new means to protect the pri-
2 vacy and identity of individuals receiving media from
3 the United States Agency for Global Media and
4 other outside media outlets from within North
5 Korea.

6 (4) To bolster existing programming from the
7 United States Agency for Global Media by restoring
8 the broadcasting capacity of damaged antennas
9 caused by Typhoon Yutu in 2018.

10 (b) ANNUAL REPORTS.—Section 104(a)(7)(B) of the
11 North Korean Human Rights Act of 2004 (22 U.S.C.
12 7814(a)(7)(B)) is amended—

13 (1) in the matter preceding clause (i)—

14 (A) by striking “1 year after the date of
15 the enactment of this paragraph” and inserting
16 “September 30, 2022”; and

17 (B) by striking “Broadcasting Board of
18 Governors” and inserting “Chief Executive Of-
19 ficer of the United States Agency for Global
20 Media”; and

21 (2) in clause (i), by inserting after “this sec-
22 tion” the following: “and sections 4 and 7 of the
23 Otto Warmbier Countering North Korean Censor-
24 ship and Surveillance Act of 2021”.