

AMENDMENT TO RULES COMMITTEE PRINT

118–10

OFFERED BY MS. GARCIA OF TEXAS

At the beginning of subtitle E of title V, insert the following (and redesignate the following sections accordingly):

1 **SEC. 541. CLARIFICATIONS OF PROCEDURE IN INVESTIGA-**
2 **TIONS OF PERSONNEL ACTIONS TAKEN**
3 **AGAINST MEMBERS OF THE ARMED FORCES**
4 **IN RETALIATION FOR PROTECTED COMMU-**
5 **NICATIONS.**

6 (a) IN GENERAL.—Subparagraphs (D) and (E) of
7 paragraph (4) of section 1034(c) of title 10, United States
8 Code, is amended to read as follows:

9 “(D)(i) Upon determining that an investigation of an
10 allegation under paragraph (1) is warranted, the Inspector
11 General making the determination shall expeditiously in-
12 vestigate the allegation to determine whether the protected
13 communication or activity under subsection (b) was a con-
14 tributing factor in the personnel action prohibited under
15 subsection (b) that was taken or withheld (or threatened
16 to be taken or withheld) against a member of the armed
17 forces.

1 “(ii) In the case of a determination made by the In-
2 specter General of the Department of Defense, that In-
3 specter General may delegate responsibility for the inves-
4 tigation to an appropriate Inspector General of a military
5 department.

6 “(iii) The member alleging the prohibited personnel
7 action may use circumstantial evidence to demonstrate
8 that the protected communication or activity under sub-
9 section (b) was a contributing factor in the personnel ac-
10 tion prohibited under subsection (b). Such circumstantial
11 evidence may include that the person taking such prohib-
12 ited personnel action knew of the protected communication
13 or activity, and that the prohibited personnel action oc-
14 curred within a period of time such that a reasonable per-
15 son could conclude that the communication or protected
16 activity was a contributing factor in the personnel action.

17 “(iv) If the Inspector General determines it likelier
18 than not that the member made a communication or par-
19 ticipated in an activity protected under subsection (b) that
20 was a contributing factor in a personnel action described
21 in such subsection, the Inspector General shall presume
22 such personnel action to be prohibited under such sub-
23 section unless the Inspector General determines there is
24 clear and convincing evidence that the same personnel ac-

1 tion would have occurred in the absence of such protected
2 communication or activity.

3 “(E) If the Inspector General preliminarily deter-
4 mines in an investigation under subparagraph (D) that a
5 personnel action prohibited under subsection (b) has oc-
6 curred and that such personnel action shall result in an
7 immediate hardship to the member alleging the personnel
8 action, the Inspector General shall promptly notify the
9 Secretary of the military department concerned or the Sec-
10 retary of Homeland Security, as applicable, of the hard-
11 ship, and such Secretary shall take such action as such
12 Secretary determines appropriate.”

13 (b) TECHNICAL AMENDMENTS.—Such paragraph is
14 further amended in subparagraphs (A) and (B) by striking
15 “subsection (h)” both places it appears and inserting
16 “subsection (i)”.

