To require the publication of opinions issued by the Office of Legal Counsel of the Department of Justice, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Ms. DUCKWORTH introduced the following bill; which was read twice and referred to the Committee on ________

A BILL

To require the publication of opinions issued by the Office of Legal Counsel of the Department of Justice, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Demanding Oversight
and Justification Over Legal Conclusions Transparency
Act” or the “DOJ OLC Transparency Act”.

SEC. 2. PUBLICATION AND DISTRIBUTION OF OPINIONS.

Section 521 of title 28, United States Code, is amended—
(1) by inserting “(a) IN GENERAL.—” before “The Attorney General”; and
(2) by adding at the end the following:
“(b) OLC OPINIONS.—
“(1) DEFINITIONS.—In this subsection, the following terms shall apply:
“(A) FINAL OLC OPINION.—The term ‘final OLC opinion’ means an OLC opinion that—
“(i) the Attorney General, Assistant Attorney General for the Office of Legal Counsel, or a Deputy Assistant General for the Office of Legal Counsel, has determined is final;
“(ii) is relied upon by government officials or government contractors;
“(iii) is relied upon to formulate legal guidance; or
“(iv) is directly or indirectly cited in another OLC opinion.
“(B) OLC OPINION.—The term ‘OLC opinion’—
“(i) means views on a matter of legal interpretation communicated by the Office of Legal Counsel of the Department of
Justice to any other office or agency, or person in an office or agency, in the Exec-utive Branch, including any office in the Department of Justice, the White House, or the Executive Office of the President, and rendered in accordance with sections 511 through 513; and

“(ii) includes—

“(I) in the case of a verbal com-munication of a legal interpretation, a memorialization of that communica-
tion;

“(II) a final OLC opinion; and

“(III) a revised OLC opinion.

“(C) Revised OLC opinion.—The term ‘revised OLC opinion’ means an OLC opinion—

“(i) that is withdrawn;

“(ii) to which information is added; or

“(iii) from which information is re-
moved.

“(2) Requirement.—Subject to paragraph (3) and in accordance with paragraph (4), the Attorney General shall publish all OLC opinions on the public website of the Department to be accessed by the public free of charge.
“(3) Redaction of classified information.—

“(A) In General.—In the case of an OLC opinion required to be published under paragraph (2) that contains information classified as confidential, secret, or top secret, the Attorney General shall—

“(i) redact the classified information from the OLC opinion before publication of the OLC opinion; and

“(ii) establish and preserve an accurate record documenting each redaction from the OLC opinion, including information describing in detail why public online disclosure of the classified information would have resulted in the associated harm that pertains to each level of classification.

“(B) Limitation.—The Attorney General may not redact information under this paragraph that is sensitive but unclassified.

“(C) Submission to Congress.—In the case of an OLC opinion described in subparagraph (A), the Attorney General shall submit the full opinion, without redaction, to any Mem-
ber of Congress and any appropriately cleared congressional staff member.

“(D) Periodic review.—To the maximum extent practicable, the Attorney General shall, on a continual basis and not less frequently than once every 90 days—

“(i) review every OLC opinion published under this subsection that contains redactions of classified information; and

“(ii) remove any redactions that no longer protect information that is classified as either sensitive, secret, or top secret.

“(4) Deadline for publication.—

“(A) In general.—Each OLC opinion issued by the Office of Legal Counsel of the Department after the date of enactment of the DOJ OLC Transparency Act shall be published in accordance with this section as soon as practicable, but not later than 48 hours, after the date of issuance of the opinion.

“(B) Previously issued opinions.—In the case of OLC opinions issued before the date of enactment of the DOJ OLC Transparency Act, the Attorney General shall, subject to sub-

paragraph (C)—
“(i) not later than 30 days after the date of enactment of the DOJ OLC Transparency Act, publish all of the OLC opinions issued during fiscal years 2020 through 2023;

“(ii) not later than 60 days after the date of enactment of the DOJ OLC Transparency Act, publish all of the OLC opinions issued during fiscal years 2000 through 2019;

“(iii) not later than 90 days after the date of enactment of the DOJ OLC Transparency Act, publish all of the OLC opinions issued during fiscal years 1980 through 1999;

“(iv) not later than 120 days after the date of enactment of the DOJ OLC Transparency Act, publish all of the OLC opinions issued during fiscal years 1960 through 1979; and

“(v) not later than 2 years after the date of enactment of the DOJ OLC Transparency Act, publish all of the OLC opinions issued before fiscal year 1960.
“(C) Description of certain opinions.—In the case of an OLC opinion issued by the Office of Legal Counsel of the Department before the date of enactment of the DOJ OLC Transparency Act for which the text of the OLC opinion cannot be located, the Attorney General shall—

“(i) publish a description of the OLC opinion; and

“(ii) submit a written certification to Congress, under penalty of perjury, that—

“(I) a good faith effort was made to find the text of the OLC opinion; and

“(II) the text of the OLC opinion is unavailable.

“(5) Right of action.—

“(A) In general.—On complaint brought by a complainant who has been harmed as a result of being deprived access to an OLC opinion that is required to be made available to the public free of charge on the public website of the Department under this subsection, the district court of the United States in the district in which the complainant resides, or has his
principal place of business, or in the District of Columbia, has jurisdiction to enjoin the Office of Legal Counsel from withholding information required to be made available under this subsection and to order the production of information improperly withheld from the complainant.

“(B) Review.—In a case brought under subparagraph (A)—

“(i) the court—

“(I) shall determine the matter de novo; and

“(II) may examine the contents of the opinion issued by the Office of Legal Counsel in camera to determine whether such information or any part thereof shall be withheld under paragraph (3); and

“(ii) the burden is on the Office of Legal Counsel to sustain its action.”.