

June 11, 2014

The Honorable Harry Reid
Senate Majority Leader
522 Hart Senate Office Building
Washington, DC 20510

The Honorable Mitch McConnell
Senate Minority Leader
317 Russell Senate Office Building
Washington, DC 20510

Re: Senate Vote on Free Flow of Information Act (S. 987)

Dear Majority Leader Reid and Minority Leader McConnell:

We, the undersigned publishers, networks, broadcasters, and journalism organizations, write to respectfully request that you schedule a vote on **S. 987, the Free Flow of Information Act**, as soon as possible.

Last week, the U.S. Supreme Court declined to hear the appeal of *New York Times* reporter James Risen. As a result, he may face jail time or fines for not revealing the identity of his confidential source for a book chapter about how the CIA may have given the Iranians valuable nuclear technology in a botched attempt to disrupt their nuclear program. Given Risen's case, as well as last year's revelations that the Justice Department secretly obtained the communications records of AP and Fox News reporters, a federal shield law is needed now more than ever to prevent government overreach and protect the public's right to know.

However, the problem revealed by the Risen, AP and Fox cases is not new. Over the past decade, federal subpoenas have been issued with disturbing frequency to the press (or their service providers) by federal prosecutors, criminal defendants and private litigants. Several reporters were imprisoned and fined for not revealing the identities of their confidential sources.

The courts have consistently encouraged Congress to pass a federal shield law. The U.S. Court of Appeals for the Fourth Circuit, in ruling that Risen has no right under the First Amendment or federal common law to protect his source, said that Congress, rather than the judiciary, "can more effectively and comprehensively weigh the policy arguments for and against adopting a privilege and define its scope." Similarly, in the 1972 case *Branzburg v. Hayes*, the Supreme Court said, "Congress has freedom to determine whether a statutory newsman's privilege is necessary and desirable and to fashion standards and rules as narrow or broad as deemed necessary to deal with the evil discerned and, equally important, to refashion those rules as experience from time to time may dictate."

While it is commendable that the Justice Department in February published revised guidelines governing information requests to the news media and their service providers, further changes are needed. Moreover, the guidelines do not have the full force and effect of law and would not prevent government overreach. Nor would they apply to other subpoenaing parties such as private litigants and criminal defendants. A law is desperately needed to put all requests for confidential source information before independent federal judges.

The Free Flow of Information Act has strong bipartisan support. Sen. Charles Schumer (D-NY) and Sen. Lindsey Graham (R-SC) are the original co-sponsors and the bill has a total of 24 co-sponsors from both parties. Last September, the Senate Judiciary Committee passed S. 987 by a 13-5 vote.

The bill is a balanced approach that would protect the public's right to know by providing protection for journalists and their confidential sources in criminal and civil cases, while enabling law enforcement officials to get the information they need to investigate and prosecute crimes and keep our nation secure. The press is the public's watchdog charged with uncovering government and corporate abuses. Government surveillance of journalists, in particular, creates a chilling effect in newsrooms and among potential sources, depriving the American people of important news and the ability to hold those in power publicly accountable.

The Free Flow of Information Act is not a free pass for the press. Instead, it sets forth reasonable standards to guide federal judges in assessing requests to compel journalists and their service providers to reveal information that could harm confidential sources and the newsgathering process. The bill creates a *qualified* privilege to protect confidential sources with numerous exceptions, including ones related to national security and to prevent death, kidnapping, substantial bodily harm, sex crimes against children and damage to critical infrastructure. The bill does not create new procedures in federal court; it would simply provide judges with clear standards for reviewing a motion to quash a subpoena or other compulsory process, which is a common procedure within the judicial system.

The bill also includes a reasonable definition of "covered journalist." The person invoking the privilege must have had the primary intent to gather news or information and disseminate it to the public. The person must also have (or had when engaging with the confidential source) some current relationship with a news entity, or have a track record of doing freelance journalism, regardless of the medium of distribution; the definition is meant to be technology-neutral. Importantly, the bill includes a safety valve, giving federal judges the discretion to protect the source of someone who does not fit precisely into the definition of "covered journalist" if the judge finds that doing so would be in the interest of justice.

A federal shield law would follow the wisdom of the 48 states and the District of Columbia that provide reasonable protections for journalists and their confidential sources. State shield laws have been on the books for decades without hindering law enforcement. In a June 2008 letter to the Senate Judiciary Committee expressing support for a federal shield law, 41 state attorneys general wrote that "recognition of such a privilege does not unduly impair the task of law enforcement or unnecessarily interfere with the truth-seeking function of the courts." The attorneys general recognized that state shield laws "must now be viewed as a policy experiment that has been thoroughly validated through successful implementation at the state level."

Journalists work hard every day to give life to the promise of the First Amendment. The ability to protect confidential sources is the oxygen that investigative reporting needs to survive. Without it, journalists cannot provide the public they serve with the spirited, independent journalism that is the lifeblood of American debate and democracy.

Once again, we urge you to bring the Free Flow of Information Act (S. 987) to the Senate floor as soon as possible.

If you have any questions, please contact Sophia Cope, Director of Government Affairs and Legislative Counsel, Newspaper Association of America, sophia.cope@naa.org, 571-366-1153.

Respectfully,

A&E Television Networks, LLC
A.H. Belo Corporation
ABC Inc.
Advance Publications, Inc.
Allbritton Communications Co.
American Society of News Editors
Arizona Newspapers Association
Associated Press Media Editors
Association of Alternative Newsmedia
Association of American Publishers, Inc.
Atlantic Media Company
Bloomberg L.P.
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Association
CBS Corporation
Center for Public Integrity
CNN
Cox Enterprises, Inc.
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Daily News, LP
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Journal
E. W. Scripps
First Amendment Coalition
First Amendment Coalition of Arizona
First Amendment Project
Forbes Inc.
Fox News Network LLC
Fox Television Stations, Inc.
Fusion
Gannett Co., Inc.
Journal Communications, Inc.
Lee Enterprises, Inc.
LIN Media
McGraw Hill Financial, Inc.
Media Law Resource Center
MPA – The Association of Magazine Media
National Association of Broadcasters
National Cable & Telecommunications
Association
National Federation of Press Women
National Geographic Society
National Newspaper Association
National Press Club

National Press Photographers Association
National Writers Union
NBCUniversal
News Corporation
Newspaper Association of America
North Jersey Media Group Inc.
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Online News Association
Online Publishers Association
Pennsylvania NewsMedia Association
POLITICO LLC
Radio Television Digital News Association
Raycom Media, Inc.
Regional Reporters Association
Reporters Committee for Freedom of the
Press
Reuters
Screen Actors Guild – American Federation
of Television and Radio Artists (SAG-
AFTRA)
Society of Professional Journalists
Software and Information Industry
Association
Stephens Media
Student Press Law Center
Texas Association of Broadcasters
Texas Press Association
The Associated Press
The Authors Guild
The Daily Beast Company LLC
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