

September 9, 2013

The Honorable Patrick Leahy
Chairman

The Honorable Chuck Grassley
Ranking Member

Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Media Coalition Support for S. 987 – Free Flow of Information Act

Dear Chairman Leahy, Ranking Member Grassley and Members of the Committee:

We, the undersigned publishers, networks, broadcasters, and journalism organizations, are pleased that the Committee began consideration of the Free Flow of Information Act (S. 987) on August 1. We write again to urge you to favorably report the bill and *oppose any amendments that would weaken the bill* when it is again considered by the Committee on September 12. In the wake of 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.

This legislation is based on the bill that the Committee passed in December 2009 on a 14-5 vote. The bipartisan bill 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 problem revealed by the 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, private litigants and criminal defendants, and several reporters were imprisoned and fined for refusing to reveal the identities of their confidential sources.

It is commendable that the Justice Department recently proposed changes to its guidelines governing information requests to the news media and their service providers. While the revised guidelines are a step in the right direction, they are voluntary 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 in the hands of an independent federal judge. In fact, in a July 29 letter to Chairman Leahy, Attorney General Eric Holder reiterated the Department of Justice's support for S. 987.

We believe that the Free Flow of Information Act 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 press is the public's watchdog charged with uncovering government and corporate abuses. Government surveillance of journalists creates a chilling effect in newsrooms and among potential sources, depriving the American people of important news and public accountability. The only way to limit this government overreach is through passage of a law that lays out clear rules for when the government can obtain information about journalists and their sources.

The Free Flow of Information Act is not a free pass for the press. Attorney General Holder wrote that the bill "strikes a careful balance between safeguarding the freedom of the press and ensuring our nation's security and the safety of the American people." The bill creates a qualified privilege to protect confidential sources. The privilege would be circumscribed in those limited cases where a journalist has confidential information that would prevent an act of terrorism or other future significant harm to national security, an exception whose limited nature needs to be underscored in the legislative history. The bill does not create new procedures in federal court. The Act 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.

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 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 support S. 987 and oppose any weakening amendments when the bill is considered by the Senate Judiciary Committee on September 12.

If you have any questions, feel free to 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
Associated Press Media Editors
Association of Alternative Newsmedia
Association of American Publishers, Inc.
Belo Corp.
California Newspaper Publishers Association
CBS Corporation
Center for Public Integrity
CNN
Cox Enterprises, Inc.
Cox Media Group
Daily News, LP
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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.
McGraw-Hill Education
Media Law Resource Center
MPA – The Association of Magazine Media
National Association of Broadcasters
National Cable & Telecommunications Association
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.
NPR
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
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 McClatchy Company
The New York Times Company
The Newspaper Guild-CWA
The Newsweek/Daily Beast Company LLC
The Washington Post
Time Inc.
Tribune Company
U.S. News & World Report
USA Today

CC: Members of the Senate Judiciary Committee