

September 9, 2009

The Honorable Patrick Leahy  
Chairman  
Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Leahy:

We understand that the Senate Judiciary Committee will soon consider the **Free Flow of Information Act (S. 448)**, which protects the public's right to know by protecting the identities of reporters' confidential sources. We write to encourage you to **vote Aye on S. 448** and to vote against any amendments in committee that would weaken the bill's well-balanced protections.

**Protecting confidential sources is not a Democratic or Republican issue.** Federal media shield legislation has received broad bipartisan support. On March 31, the House of Representatives passed a similar but stronger federal media shield bill by a unanimous voice vote. Members on both sides of the aisle can agree that an informed citizenry supported by a free and independent press is vital to our democracy. While reporters and their editors strive to limit the use of confidential sources – on-the-record information is always encouraged – there are times when confidential sources may be necessary when investigating stories of interest to the public.

The mistreatment of soldiers at Walter Reed Medical Center, safety problems at nuclear power plants and the massive fraud at Enron: all of these groundbreaking stories and many more would have remained unknown both to the public and to Congress without information from confidential sources. However, if potential sources, including government and corporate whistleblowers, fear that reporters will be forced to reveal their identities, these sources will not come forward, and the public will lose the ability to hold the government and other important institutions accountable.

And it is difficult for America to preach to the world the value of freedom – including freedom of the press – while imprisoning and bankrupting journalists for protecting the identities of their confidential sources.

**The Free Flow of Information Act responds to a real and on-going problem.** Since 2001, five journalists have been sentenced or jailed for refusing to reveal their confidential sources in federal court. Two reporters were sentenced to 18 months in prison and one reporter faced up to \$5,000 a day in fines. A 2006 study concluded that this surge in high-profile federal cases against reporters has contributed to an overall increase in subpoenas to the press, as government attorneys and private litigants have been emboldened by the lack of a federal media shield law.<sup>1</sup> A companion study estimated that in 2006 alone, 67 federal subpoenas sought confidential material from reporters, with 41 of those subpoenas seeking the name of a confidential source.<sup>2</sup>

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<sup>1</sup> RonNell Andersen Jones, "Media Subpoenas: Impact, Perception, and Legal Protection in the Changing World of American Journalism" (Working Draft) (2009), 40, 51, <http://ssrn.com/abstract=1407105>.

<sup>2</sup> RonNell Andersen Jones, "Avalanche or Undue Alarm? An Empirical Study of Subpoenas Received by the News Media," 93 Minnesota Law Review 585, 641 (2008), <http://ssrn.com/abstract=1125500>.

In addition to chilling potential whistleblowers, such subpoenas negatively impact the public's right to know by discouraging the press from playing its most valuable role as a public watchdog.<sup>3</sup> A federal media shield law would force prosecutors and civil litigants to turn to reporters as the last resort – not the first – in an investigation.

**The Free Flow of Information Act does not give a free pass to the press or their sources.** The bill sets forth reasonable and well-balanced ground rules for when a reporter can be compelled to testify about confidential sources. Substantial safeguards are preserved for the government when information is needed to prevent an act of terrorism or other significant harm to national security, to prevent death or substantial bodily harm, and to furnish eyewitness observations of a crime. In addition, numerous changes were made to the bill, including to the definition of journalist to exclude terrorists.

**Law enforcement officials have expressed support for the legislation.** In June 2008, the Attorneys General from 42 states urged the Senate to pass the Free Flow of Information Act, noting that “an informed citizenry and the preservation of news information sources are vitally important to a free society.” The Attorneys General warned that the lack of federal standards is “producing inconsistency and uncertainty” for reporters and sources, “frustrates the purposes of the state recognized privileges and undercuts the benefit to the public that the states have sought to bestow through their shield laws.”

We hope that you and your colleagues on the Judiciary Committee will report the strongest possible federal media shield bill and resist any amendments that would weaken the protections in the bill.

We greatly appreciate your longtime support of federal media shield legislation and your continued leadership on this issue.

Sincerely,

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<sup>3</sup> Footnote 1, 25-33.

ABC Inc.  
Advance Publications, Inc.  
A.H. Belo Corporation  
Allbritton Communications Co.  
American Business Media  
American Society of Magazine Editors  
American Society of News Editors  
The Associated Press  
Associated Press Managing Editors Association  
Association of Alternative Newsweeklies  
Association of American Publishers, Inc.  
Association of Capitol Reporters and Editors  
The Authors Guild  
Belo Corp.  
Bloomberg News  
California First Amendment Coalition  
CBS Corporation  
Clear Channel  
CNN  
Coalition of Journalists for Open Government  
Copley Press, Inc.  
Court TV  
Cox Enterprises, Inc.  
Cox Newspapers  
Cox Television  
Daily News, L.P.  
Dow Jones & Company, Inc.  
E. W. Scripps  
First Amendment Coalition of Arizona, Inc.  
Freedom Communications, Inc.  
Gannett Co., Inc.  
Gray Television  
Hachette Filipacchi Media U.S., Inc.  
Hearst Corp.  
Incisive Media, LLC  
Lee Enterprises, Inc.  
Magazine Publishers of America  
McClatchy Company  
The McGraw Hill Companies  
Media Law Resource Center  
National Association of Broadcasters  
National Federation of Press Women  
National Geographic Society  
National Newspaper Association  
National Press Club  
National Press Photographers Association  
National Public Radio  
NBC Universal  
New York Times Co.  
News Corporation  
Newspaper Association of America

Newspaper Guild-CWA  
North Jersey Media Group, Inc.  
Online News Association  
Pennsylvania Newspaper Association  
Radio-Television News Directors Association  
Raycom Media, Inc.  
Regional Reporters Association  
Reporters Committee for Freedom of the Press  
Reuters America LLC  
Society of Professional Journalists  
Telemundo Network  
Time Inc.  
Time Warner Cable Inc.  
Time Warner Inc.  
Tribune Company  
U.S. News & World Report  
USA Today  
Walt Disney Co.  
Washington Post Company  
The Washington Times  
White House News Photographers Association