

Media Coalition Supporting the Free Flow of Information Act

March 11, 2008

VIA HAND DELIVERY: URGENT

The Honorable Patrick J. Leahy
433 Russell Senate Office Building
United States Senate
Washington, DC 20515

RE: S. 2035 and H.R. 2102, the *Free Flow of Information Act*

Dear Senator Leahy:

While the calendar has turned from 2007 to 2008, the pressing need for a federal shield law remains and includes a new twist: bankrupting journalists into revealing their confidential sources. Over the weekend, a federal judge issued a stunning decision requiring Toni Locy, a former USA Today reporter and now university professor, to personally pay contempt fines for refusing to reveal her confidential sources. In this unprecedented ruling in former Army scientist Steven Hatfill's Privacy suit against the federal government, U.S. District Judge Reggie Walton ordered Ms. Locy to personally pay fines of \$500 a day for the first week, \$1,000 a day for the second week and \$5,000 thereafter until her next court appearance in early April and prohibited her former employer, or anyone, from reimbursing her. All around the nation, this ruling sends a chilling message to journalists, whistleblowers and other confidential sources.

On behalf of the men and women across the country who work to bring the American people vital news and information, we, the undersigned media companies and organizations, urge the Senate to send a different message that now is the time to expeditiously pass the *Free Flow of Information Act* (S. 2035/ H.R. 2102), legislation that is vitally important to the national interest, an informed citizenry, and a free and vibrant press.

Protecting confidential sources through federal legislation has broad support on both sides of the aisle, in both chambers of Congress, and from state attorneys general across the nation. Your support is essential to ensure that the American public has access to news and information about their government and the institutions that affect their daily lives.

S. 2035, which was favorably reported out of the Senate Judiciary Committee by a 15-4 vote, has been stalled in the Senate since last October. Last week, Senate Judiciary Chairman Patrick Leahy (D-VT) and Ranking Member Arlen Specter (R-PA) urged party leaders to schedule floor consideration on this important legislation. Chairman Leahy and Ranking Member Specter emphasized in a letter to Majority Leader Harry Reid (D-NV) and Minority Leader Mitch McConnell (R-KY) that “the bipartisan majority support in the House and in the Senate Judiciary Committee demonstrates that federal shield legislation deserves floor time.”

Last fall, a similar shield bill (H.R. 2102) passed by an overwhelming 398-21 vote. Both versions of the *Free Flow of Information Act* are available for immediate floor action on the Senate Business Calendar. As the strength of these votes suggests, Senators and House Members from opposite ends of the political spectrum have joined together to support the public’s right to have essential information and to protect confidential sources who are sometimes the only way the public can get this information.

The chilling order issued by the federal court in Ms. Locy’s case, unfortunately, reflects a growing trend by the federal government and civil litigants to coerce journalists to reveal their sources. More than 40 reporters and media organizations have been subpoenaed or questioned about their confidential sources, their notes, and their work product in criminal and civil cases in federal court over the last few years. It is this trend that threatens the integrity of investigative journalism and underscores the need for a federal shield law.

While the *Free Flow of Information Act* will protect confidential sources by establishing a uniform standard for obtaining information from reporters in federal court proceedings, it is important to note that both versions of the legislation have been amended to ensure that national security is also protected. While many state laws provide for a more absolute privilege, both versions of this legislation are limited to a qualified privilege with exceptions for acts of terrorism or other significant harm to national security, eyewitness observations or commitment of criminal or tortious conduct by the covered person, and the prevention of death or substantial body harm.

With 49 states and the District of Columbia having either common law or codified protection for confidential sources, there is a growing (bipartisan) acknowledgement that enactment of a federal law is imperative. In a brief filed with the United States Supreme Court, a group of 34 state attorneys general pointed out that lack of a clear standard of federal protection undermines state law. These state laws have worked successfully for many years, defining those covered by the law and the limits of that coverage. At the same time, they have protected the public’s right to information while still allowing these states to investigate crimes and protect public safety.

News organizations prefer to have their sources on the record whenever possible. However, history is replete with examples of news articles critical to the national interest that would have never been written had it not been for the protection of confidential sources. As many of your Republican and Democratic colleagues have stressed and state legislatures have recognized, the time is now for the protection of confidential sources, and the safeguarding of the public’s right to know. This issue is too important to remain unresolved. We urge you to support

immediate and favorable Senate floor consideration of the *Free Flow of Information Act* (S. 2035/ H.R. 2102).

If you have any questions or need additional information, please contact Paul Boyle or Laura Rychak of the Newspaper Association of America at 202-783-4697. Thank you.

Very truly yours,

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