

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
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Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Committee On The Judiciary,

Opening Statement On The Free Flow Of Information Act
Executive Business Meeting
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Last Congress, I was proud to chair this Committee when we reported press shield legislation for the first time. I hope this is the year we are finally able to move forward and enact this legislation into law. Our bipartisan legislation, which would establish a qualified privilege for journalists to protect their sources and the public's right to know, has been considered over several years and has been carried on our Committee agenda for several months. It will be our first legislative item today.

Senators Specter and Schumer have worked diligently with the Department of Justice, the Office of the Director for National Intelligence and the Office of the White House Counsel in consultation on this legislation. The parties have been meeting to discuss this bill for several months. The lead sponsors have made several changes to the bill to address the administration's concerns, so that the bill protects the Government's important national security and law enforcement interests.

Yesterday, I receive a letter from a coalition of more than 70 news media organizations expressing their strong support of these changes. I will place a copy of their letter in the record. I support the thoughtful revisions that have been made to this bill, and I will cosponsor the substitute amendment. I hope that the Committee can report a meaningful shield bill that has broad support.

The House of Representatives passed a similar measure, H.R. 985, on March 31. That bill has 50 sponsors from both sides of the aisle. Last Congress, as I have noted, this Committee favorably reported a similar measure, cosponsored by Senators Lugar, Dodd, Specter, Schumer, Graham and myself, by a strong, bipartisan 15 to 4 vote.

President Obama has stated his support of Federal shield legislation, and I was pleased that, during his confirmation hearing, Attorney General Eric Holder expressed his support for a carefully crafted Federal shield law. He repeated that support when he testified before this Committee in June. A free and vibrant press is essential to a free society. That is why I have worked hard to enact a meaningful Federal shield law. All of us – whether Republican, Democrat or Independent – have an interest in enacting a balanced and meaningful shield bill to ensure a free flow of information to the

American people. Forty-nine States and the District of Columbia currently have codified or common law protections for confidential source information. But, even with these State law protections, the press remains the first stop, rather than the stop of last resort, for our Government and private litigants when it comes to seeking information.

Scores of reporters have been questioned by Federal prosecutors about their sources, notes and reports in recent years. This is a dangerous trend, that has had a chilling effect on the press and the public's right to know.

Enacting the Free Flow of Information Act – which carefully balances the need to protect confidential source information with the need to protect law enforcement and national security needs – would help to reverse this troubling trend and benefit all Americans.

The substitute, which Senator Schumer and Senator Specter have circulated and will offer, creates a qualified privilege to protect journalists from being forced to reveal their confidential sources. The bill contains exceptions to the privilege for criminal conduct and national security. No one would quibble with the notion that there are circumstances when the Government can and should have the right to compel information to keep us safe. But, many newsworthy stories concerning national security issues were published with the help of confidential sources, to the great benefit of the public.

The Federal shield legislation strikes the right balance among these important objectives. Several Federal courts have recognized a reporters' privilege either by statute or common law for years. There is no evidence of a single circumstance where the privilege caused any harm to national security or to law enforcement.

After years of debate and countless cases of reporters being held in contempt, fined and even jailed for honoring their professional commitment not to publicly reveal their sources, the time has come to enact a balanced Federal shield law. I encourage all Members of the Committee to support this important bill.

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